A Rawlsian Case for Public Judgment

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DEDICATION

I dedicate this project to my wonderful wife, Lisa. Without your love and support, this and much else would have never been possible. Thank you so much for all you do.

I love you,
Matt

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ABSTRACT

We can best understand the moral obligations of citizens and officials concerning public reason as set out by John Rawls when two differing standards latent in his body of work are made explicit. The weaker standard, which I call Public Representation (or PR), is exegetically supported primarily by the *proviso* found in his "The Idea of Public Reason Revisited". PR allows that citizens may deliberate over serious political matters, both internally and with others, according to whatever perspective and using whatever reasons they please, so long as they believe the positions they advocate are adequately just and adequately justifiable with public reasons. I present PR as establishing a moral minimum citizens and officials bear an obligation to satisfy on pain of failing to garner an adequate degree of justice, respect, legitimacy, and stability.

The more demanding standard, which I call Public Judgment (or PJ), is exegetically supported by quotes found throughout Rawls's work, but especially in *Political Liberalism*, "The Idea of Public Reason Revisited," and *Justice as Fairness: A Restatement.* PJ requires that citizens deliberate over serious political matters, both internally and with others, according to a public perspective with public reasons, that they only advocate positions and offer justifications they consider *most* reasonable, and that they share their thought processes in public. PR is nonobligatory, but achieves significant gains according to each of the four key political values mentioned above, which gives dedicated citizens good reason to embrace it.

Chapter one lays out and explores the big picture concepts framing the project; chapter two sets out Rawls's view on public reason according to the primary texts; chapter three presents four contemporary liberal theorists' views on public reason – Nicholas Wolterstorff, Robert Audi, David Reidy, and Micah Schwartzman; chapter four uses the lessons of chapter three to help fully unpack and compare Public Representation and Public Judgment; and chapter five considers three potential objections to my view and offers corresponding replies.

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INTRODUCTION

The most influential political philosopher of the twentieth century, John Rawls continues to frame and shape contemporary scholarship. Though his work has been critiqued and built upon by hundreds of scholars for over half a century, in light of its impact, practical import, and density, it remains worthy of serious engagement. Given ongoing academic and popular debate over the use of religious and other nonpublic reasons in political decision-making, Rawls's idea of public reason, which concerns the moral norms of citizens and officials engaged in political deliberation and decision-making, is especially worthy of our continued attention. However, on close examination of that idea, I argue that an ambiguity becomes apparent.

In attempting to reconcile the fact of reasonable pluralism with the ideal of stability for the right reasons, Rawls argues in favor of a common language and common values for citizens and officials to use to settle issues concerning constitutional essentials and matters of basic justice. However, there is some question as to whether Rawls intends to require that we internally deliberate according to, and exclusively consider public reasons and values when making serious political decisions, or whether he only intends to require that we be ready to justify favored policies in political language when asked to do so, leaving us free to actually *decide* serious political questions according to our nonpublic comprehensive doctrines.

Support for both readings can be found in the primary texts. In spots Rawls speaks of our need to develop a political sense of justice, to reason internally and publicly

in concert with others from that perspective, and to strive to arrive at what we sincerely believe to be the most just positions, and to advocate, adjudicate, legislate and vote accordingly. But in other spots he mentions only the need to ensure losers in a vote are given justifications we could reasonably expect them to accept, regardless of their worldview. Though Rawls never explicitly acknowledges the differing standards or presents them in this way, I argue that he can be understood as offering the less demanding minimalist requirement, which I call Public Representation (or PR), as a baseline moral minimum, and the more demanding requirement, which I call Public Judgment (or PJ), as a laudable ideal. Further, I argue that the latter, more demanding standard is morally preferable because when internalized and practiced, it produces significant gains for four values integral to liberal theory: justice, respect, legitimacy and stability.

Thus, the central goals of this project are as follows: 1) To establish the ambiguity and tension between Rawls's apparently differing standards on public reason. 2) To relieve that tension by presenting the differing standards as weaker and stronger requirements on a spectrum of morally permissible alternatives. 3) To argue for the moral necessity of the weaker standard, and the moral superiority of the more demanding standard, according to the degree each promotes the four values mentioned above.

In the opening chapter my aim is to provide sufficient background knowledge of liberalism in general and Rawlsian Liberalism in particular, as well as an adequate understanding of the concepts of respect, justice, legitimacy and stability to enable the reader to properly understand and evaluate my thesis. Enlisting the help of a particularly

illuminating article by Jeremy Waldron, I begin by outlining the broad liberal project. I then trace the big-picture evolution of Rawls's work from *A Theory of Justice*, published in 1971, through *Justice as Fairness: A Restatement*, published in 2001. I then explain a key component of Rawls's method of justification, which influences his method of argumentation – the coherence-based approach to ethics called reflective equilibrium. Last, I unpack and explore the key liberal concepts of justice, respect, legitimacy and stability, understandings of which are essential to properly navigate chapter four.

In chapter two I carefully reconstruct Rawls's view on public reason, working closely with the primary texts, to assure the reader I am not erecting a straw man. After highlighting the claimed tension, in chapter three I explore the views of four prominent contemporary liberals working in the area—Robert Audi, Nicholas Wolterstorff, David Reidy, and Micah Schwartzman. Each of these authors engages Rawls differently, and understanding their views will not only bolster our understanding of Rawls's work, but inform analysis of my thesis. In chapter four, I finally organize and polish what I take to be Rawls's more and less demanding standards, and analyze them from the perspectives of justice, respect, legitimacy and stability. Along the way I compare PR and PJ to the competing standards proposed by the authors covered in chapter three, argue that PJ's many benefits give us strong reason to prefer it, and make the case that while only PR is required, PJ fits well within the Rawlsian project as an attractive supererogatory ideal. I close the fourth chapter by revisiting the value of legitimacy, confirming that PR delivers a requisite degree. Last, in the fifth and final chapter I consider and reply to three potential objections, closing with the modest conclusion that if PJ is practicable, we have

good reason to endorse it, abide by its mandates, and encourage others to do the same, even if it is not morally obligatory.

CHAPTER I:
LAYING THE FOUNDATION

Abstract

Chapter one presents an overview of liberalism in general, as well as Rawlsian Liberalism in particular, and includes separate sections devoted to reflective equilibrium, and to the political values of justice, respect, legitimacy, and stability.

Rawlsian Liberalism

Before we can understand Rawls's view on public reason, we must first understand Rawlsian Liberalism. And before we can understand Rawlsian Liberalism, we must have some idea of the philosophical commitments of liberalism in general. At the heart of those philosophical commitments lies considerable respect for citizens' capacity to formulate, revise, and act on a life plan. From the perspective of a political association, this rational agency establishes each person's high moral status, limits the sorts of things that may be done to them, and necessitates their involvement in decisions that affect them. Though liberals disagree over the exact implications, they share a deep commitment to "a conception of freedom and of respect for the capacities and the agency of individual men and women," and this commitment generates "a requirement that all aspects of the social should either be made acceptable or be capable of being made acceptable to every last individual."[1] As Jeremy Waldron explains, liberals do this by focusing on *consent*.

> The thesis that I want to say is *fundamentally* liberal is this: a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them."[2]

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[1] Waldron, Jeremy. "The Theoretical Foundations of Liberalism," The Philosophical Quarterly, Vol. 37, No. 147 (Apr., 1987): 128.
[2] Ibid 140.

Of course, full consent is unattainable, for unanimity is unrealistic, and citizens typically do not choose their state, but simply inherit it. Liberal theorists have alleviated this difficulty by exploring tacit and hypothetical consent, and Waldron makes an important distinction between voluntaristic and rationalistic accounts of state legitimacy. The former requires the actual consent of the governed, while the latter only the hypothetical consent of the governed. For example, Rousseau's General Will, which enjoys moral authority as the product of an actual democratic vote, represents a theory of the voluntaristic sort, while Kant's Doctrine of Right, which explores the appropriate restrictions for free equals in the abstract, represents a theory of the rationalistic sort. But both Rousseau and Kant, as well as Locke, Hobbes and other prominent liberals, base their theories on some form of a social contract—of citizens either actually or hypothetically consenting to the form of their government, as well as the content of particular laws.

Recognizing the promise of the rationalistic social contract approach, and unsatisfied with utilitarian and intuitionist defenses of modern liberal democracy, John Rawls carried the tradition to a higher level of abstraction and refinement. In *A Theory of Justice* (or *TJ*), first published in 1971, Rawls uses the original position argument—a hypothetical social contract that blocks imagined contractors from personal information that would bias their judgment—to illuminate the sorts of political structures equally situated free agents would reject and endorse. The centerpieces of the result are Rawls's now famous principles of justice—the Liberty Principle, Equal Opportunity Principle, and Difference Principle. Guaranteeing all a system of equal basic liberties, as well as

meaningful opportunity to compete on equal footing, and the qualification that structural inequalities tied to social positions are to only occur when to the benefit of all, Rawls argues that his principles of justice are those "that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association."[3] Along with a view of persons as possessing the ability to author and act on a life plan, and a view of society as a cooperative venture for mutual benefit, they make up the central pillars of *justice as fairness*, Rawls's favored conception of justice. Rawls does not claim to prove that any existing society has fully chosen his two principles of justice, or that actually achieving a degree of impartiality enjoyed by original position agents is even possible. But only that since his conclusions are what reasonable and rational agents in a position of equality would endorse, his conception of justice enjoys a high degree of moral authority, and should gain our rational assent.

After presenting the original position in the first third, and articulating the sorts of institutions justice as fairness would require in the middle third, Rawls spends the latter third of *TJ* exploring justice as fairness's ability to generate stability. He reasons that in light of the Aristotelian Principle, which asserts that humans enjoy refining their skills and abilities, combined with a propensity to reciprocate just treatment with just treatment, our morality develops from childhood onward in a progressively more complex and abstract direction. He contends that we begin our moral development as a child in a

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[3] *A Theory of Justice: Revised Edition.* Harvard University Press, Cambridge, MA. 1999: 10.

family.[4] While we do not understand why our parents impose upon us the rules that they do, their love for us generates a reciprocal desire to please, and when we behave contrary to their wishes we experience what Rawls calls authority guilt. Later in life we find ourselves as members of different associations, such as clubs and sports teams. When the arrangements of such associations are fair and just, we come to respect our fellow participants, and experience associational guilt when we fail to do our part. Finally, drawn to ever more complex moral experiences in accordance with the Aristotelian Principle, we find ourselves as citizens, and witnessing the mutual sacrifice and cooperation of our fellow citizens, experience principle guilt when we fail to reciprocate our fellow citizens' honoring the principles of justice to which our society is committed. Given its complexity and the fact that justice as fairness captures precisely the principles appropriate for a society of free equals, behaving in accordance with it will generate great personal satisfaction, and along with it considerable stability. Rawls argues further that if we assume a Kantian view of the person as essentially rational, doing justice will not only *align* with our good, but over time become *central to* our good. For citizens living in a society honoring justice as fairness will come to self-identify to a large extent as citizens, and view their political office and doing justice for its own sake essential to their personal good. For a flourishing fair society enables citizens to express their true nature as rational equals through political action, and to more fully develop their excellences in a way only possible within a cooperative frame. Indeed, at this point in his career, Rawls thoroughly

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[4] *TJ* 429.

believed that "the collective activity of justice is the preeminent form of human flourishing."[5]

However, Rawls soon came to realize that he had miscalculated the propensity of citizens to embrace a Kantian view of the self. Persons living under conditions roughly satisfying justice as fairness do not universally agree that they are fundamentally rational and at their highest when engaged in fair political cooperation. While citizens may converge on roughly liberal conceptions of justice, they quite often rank their roles as citizens beneath other personal commitments. One's status as a child of God, for example, is more central to the identity of many than their status as a free rational agent. And so the so-called "congruence argument" linking justice as fairness with citizens' personal good empirically proved weak, which undermined *TJ*'s claim to stability.

Rawls regrouped, and his solution came in his second book, *Political Liberalism* (or *PL*), first published in 1993. He reasoned that while we cannot expect citizens to embrace the Kantian view and converge on justice as fairness, it is not irrational to hope that reasonable citizens will commit to a family of generically liberal conceptions of justice for reasons grounded in or simply consistent with their comprehensive doctrines. This was essential to his strategy for reconciling the fact of reasonable pluralism—the unavoidable social reality that unless oppressed, persons will settle on conflicting worldviews—with the ideal of stability for the right reasons—which seeks citizens' rational commitment to the perpetuation of a just state. He argued that while minor

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[5] *TJ* 463.

political disagreements will inevitably persist, an "overlapping consensus" on the core features of liberalism is possible, and can generate a requisite degree of stability. While in *TJ* Rawls drew no distinction between general moral theory and political philosophy, this division is a key element of *Political Liberalism*.[6] Rather than requiring citizens to fully adopt justice as fairness as a quasi-comprehensive view, Rawls argues that only two basic conditions are necessary and sufficient to legitimate the authority of a generically liberal democracy—to render collective self-legislation morally enforceable amongst citizens who conceive of themselves as free equals, and of society as a cooperative enterprise.[7] First, such a state must secure a core list of basic liberties, such as those found in the United States Bill of Rights, and satisfy the demands of reciprocity in economic policy, such that the advantaged position of the well off in society is contingent upon the betterment of the less fortunate.[8] Also, conditions guaranteeing substantive equality of opportunity as well as some threshold minimum social safety net must obtain. Second, citizens and officials are to use a common language and common values to settle disputed matters of constitutional essentials and basic justice, where the stakes are highest. This second feature is integral to the ideal of representative liberal democracy, for its satisfaction contributes to each citizen's ability to have equal say in the authorship of the laws to which they are subjected, honoring the liberal emphasis on respect for individual

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[6] *Political Liberalism: Expanded Edition.* Columbia University Press, New York, 2005: XV.
[7] As explained in his *The Law of Peoples*, Rawls only argues that these conditions are necessary for a society whose members view themselves in this special sort of way. The requirements are more lax for peoples who do not view themselves as free equals. That is, illiberal states can be legitimate.
[8] Though Rawls considers his Difference Principle philosophically superior to existing alternatives, he explicitly concedes that other principles adequately promote economic reciprocity to enable legitimacy.

autonomy via consent, and consequently enabling the state's moral authority to coerce—the state's *legitimacy*. Thus, in *PL* Rawls retains use of the original position as a heuristic device, but recasts justice as fairness as only one conception in a family of acceptable thin political, as opposed to comprehensive, conceptions of justice, and argues that liberal legitimacy is fully compatible with a pluralistic democracy.

While *PL* shows how a multicultural democracy can be legitimate and stable, *Justice as Fairness: A Restatement* (or *JFR*), first published in 2001, attempts to persuade the reader of the superiority of justice as fairness as the most reasonable conception of justice available. As in *PL*, in *JFR* Rawls explicitly presents it as a thin political conception of justice, capable of generating widespread support from citizens committed to a range of comprehensive doctrines.[9] He explains justice as fairness serves as a sort of ideological *module*, capable of being supported from a wide variety of reasonable comprehensive doctrines. Rawls once again utilizes the original position, and defends its use as a heuristic device that appropriately models our convictions concerning "fair conditions of agreement between citizens as free and equal, and appropriate restrictions on reasons."[10] Much in *JFR* concerns public reason, and it is here that Rawls provides some of the strongest support for what I will call the Principle of Public Judgment. But I save those sections for next chapter, where we fully explore Rawls on public reason.

Though for the most part it falls outside the scope of this project, in *The Law of Peoples* (or *LP*), first published in 1999, Rawls turns his attention from domestic to

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[9] *Justice as Fairness: A Restatement*. Harvard University Press, Cambridge, MA. 2003: xii.
[10] *JFR* 17.

international justice. Recognizing the great evils of history, and hoping a just political order will prevent their reoccurrence, Rawls lays out the principles liberal states should follow in their foreign policy, whether dealing with other liberal states, or with illiberal regimes. He aims to show that these principles are compatible with liberalism's domestic commitments, as well as particular liberal states' viability and stability. Identifying five types of *peoples*—reasonable liberal peoples, decent peoples, outlaw states, societies burdened by unfavorable conditions, and benevolent absolutisms—Rawls advocates a principled view that accommodates the desire to promote human rights, and the desire for peace, hoping that both are best achieved when we encourage democracy by example when we can, and by force when we must.[11] Despite focusing mainly on international matters, *LP* includes several sections explicitly relevant to public reason, which will be discussed next chapter.

Reflective Equilibrium

Before exploring the concepts of justice, respect, legitimacy and stability, a note on Rawls's justificatory method, reflective equilibrium. As its name implies, reflective equilibrium involves a bottom-up and top-down interplay between clear instances of justice and injustice that have survived critical evaluation with abstract principles able to order and make sense of those convictions. The aim of reflective equilibrium is coherence

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[11] *The Law of Peoples.* Harvard University Press, Cambridge, MA, 2003: 4.

and intellectual tranquility, such that when it is achieved, all tension among one's moral commitments is relieved, and all seem justified and consistent. Both compelling particular instances and compelling abstract principles can and should move thinkers to modify their overall view after adequate deliberation. Both sides of the equation are subject to revision, allowing a thinker to avoid both mere rationalization of one's prejudices and dogmatic deference to theory. Rawls does not attempt to build a theory or conception of justice from the ground up, and even the original position itself is subject to revision should it fail to confirm our most confident convictions. Whatever the output of the OP, it must conform with our considered convictions. As Rawls puts it, "a conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view."[12] Rather than simply being able to make sense of what we already know, the resulting coherent view is especially useful when examining unfamiliar areas.

> For example, we are confident that religious intolerance and racial discrimination are unjust. We think that we have examined these things with care and have reached what we believe is an impartial judgment not likely to be distorted by an excessive attention to our own interests. These convictions are provisional fixed

[12] *TJ* 19.

> points which we presume any conception of justice must fit. But we have much less assurance as to what is the correct distribution of wealth and authority.[13]

With a conception of justice able to render intelligible our most confident convictions in hand, we are able to apply its principles to new problems and conclude with confidence that the judgments reached are, if nothing else, consistent with our broader view and consequently justified. At least this is the case when new cases are absorbed, perhaps requiring minor adjustment, and the system returns to a state of tranquility.

Four Key Political Values

The above overview is necessarily incomplete. It provides only a sketch of liberalism in general, of how Rawls extends the tradition, and of the relationships amongst Rawls's works. I have intentionally downplayed his views on public reason, which are present from the very beginning, saving them to fully unpack next chapter. But before delving into public reason proper, we need to cover several key concepts that will ultimately be used to contrast Public Representation with Public Judgment. These key concepts are justice, respect, legitimacy and stability, and in the process of explaining their meaning we will continue to build upon the understanding of Rawlsian Liberalism began above.

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[13] *TJ* 17.

Justice

While Marxists denounce the concept as a distraction used to pacify the masses, most liberal political philosophers consider distributive or social justice the central concept of their field. And while Plato showed that treating like cases alike and giving persons their due is essential to any plausible account, what Rawls calls "justice as regularity" is merely formal, and therefore sets only a broad limiting condition on candidate conceptions of justice. Libertarians such as Nozick begin fleshing out justice by stipulating individual rights.[14] But Rawls argues that we should target our theorizing at the background rules that shape our institutions at the most fundamental level. It is the "basic structure of society" that is the proper subject of justice because "its effects are so profound and present from the start."[15]

By basic social structure Rawls is referring to "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation,"[16] and by "major social institutions" he is specifically speaking of "the political constitution and the principal economic and social arrangements"[17] such as "legally recognized forms of property, and the organization of the economy, and the nature of the family."[18] Elaborating further, Rawls explains:

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[14] Nozick, Robert. *Anarchy, State, and Utopia*. Basic Books, 1974: 176.
[15] *TJ* 7.
[16] *TJ* 6.
[17] *TJ* 6.
[18] *PL* 258.

> Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur. As examples of intuitions, or more generally social practices, we may think of games and rituals, trials and parliaments, markets and systems of property.[19]

Thus, justice concerns background institutions, and a constitution or law or constellation of basic institutions is just to the extent that, according to conception-specific standards, it properly balances a set of liberties and properly distributes the social product. As Rawls puts it, "the justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society."[20]

Particular interpretations of the general concept of justice constitute specific conceptions.[21] Rawls's two principles, for example—the Liberty Principle and the Equal Opportunity/Difference Principle—are components of his conception of justice as fairness. Robert Nozick's principles of Justice in Holding, Acquisition and Rectification, are key components of his entitlement theory of justice.[22] Beyond core principles,

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[19] *TJ* 48.
[20] *TJ* 7.
[21] *TJ* 5.
[22] *Anarchy, State and Utopia*. Note that Rawls argues in *PL* in a section entitled "The Basic Structure as Subject" that we shouldn't consider libertarianism a genuine theory of justice as he uses the term, since it

conceptions of justice also include views of persons (as free equals or as inviolable rights holders, for example), of society (as a cooperative undertaking for mutual advantage or as a competitive undertaking for individual advantage, for example), as well as heuristic or representative devices capable of articulating and supporting the view (such as Rawls's original position or Nozick's utopian thought experiment, for example), and accounts of moral psychology supporting a particular conception's claim to stability.

When Rawls says we live under the *circumstances* of justice, he is alluding to the fact that resources are available but limited, and that citizens' pursuit of those resources creates conflict, but that the possibility exists that our interests can be brought into harmony such that cooperation is fruitful for all.[23] Principles of justice respond to these facts by appropriately guiding the creation of constitutions, statues and policies, and serve as standards by which we can judge how well a constellation of basic institutions properly promotes citizen liberty, regulates their interaction, and disperses social wealth. That is, principles of justice "provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of cooperation."[24] One way to think of how this is done is within the context of primary goods.

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fails to engage the issue of justice at the level of the basic social structure, and presupposes that individuals possess inviolable and absolute rights on the front end, including very strong property rights. He considers Nozick's a transactional or allocative conception of justice, and not a conception of distributive or social justice at all.

[23] *TJ* 109.

[24] *TJ* 4.

Primary goods are all-purpose means we can reasonably expect any person to desire independent of their conception of the good. Social primary goods—those determined by social conventions—include "rights, liberties, and opportunities, and income and wealth," as well as self-respect.[25] Natural primary goods—those determined by nature—include "health and vigor, intelligence and imagination."[26] While natural primary goods are initially disbursed according to the natural lottery, social primary goods are determined by the social structure. Thus, inequalities in social primary goods can be mitigated, and inequalities in natural primary goods can be utilized to everyone's advantage.

Effectively distributing the social primary good of liberty, Rawls's first principle of justice, the Liberty Principle, guarantees a fully adequate and equal system of basic rights to all. Included in this system would be "political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law."[27] Rawls's second principle of justice, the Difference Principle/Liberal Principle of Fair Equality of Opportunity,[28] applies to "the distribution of income and wealth and to the design of organizations that make use of differences in

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[25] *TJ* 54.
[26] *TJ* 54.
[27] *TJ* 53.
[28] *TJ* 73.

authority and responsibility."[29] This includes tax law, property law, and norms regulating hiring and firing. While income and wealth need not be spread evenly, structural inequalities must be arranged such that they are to everyone's advantage, and all are to have an equal opportunity to compete for both government office and nonpublic office in the general economy.

According to the Difference Principle, institutions are to be designed such that inequalities benefit the least well off. This group refers to "persons whose family and class origins are more disadvantaged than others, whose natural endowments (as realized) permit them to fair less well, and whose fortune and luck in the course of life turn out to be less happy, all within the normal range… and with the relevant measures based on social primary goods."[30] Further, an unequal distribution of benefits is permissible only when it makes all better off than they would be under a system of strict egalitarianism. Indeed, Rawls argues that "all social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage. Injustice, then, is simply inequalities that are not to the benefit of all."[31] This conclusion is not only affirmed by the original position, but Rawls argues that a social structure grounded in reciprocity in this way would enjoy the commitment of creatures with our psychological propensities, generating a great deal of stability—certainly more than one with similar

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[29] *TJ* 53.
[30] *TJ* 83.
[31] *TJ* 54.

surface level policies, but justified by reference to utility maximization. (More on stability below.)

Respect

Given liberalism's commitment to the sovereignty of the individual, a brief section on the concept of respect is necessary to fully understand the concepts of justice, legitimacy, and stability for the right reasons, with which respect is intimately linked. According to Rawls, respecting a person at minimum entails "treating them in ways that they can see to be justified."[32] And an action or a conclusion is justified when both the reasons and the reasoning given to support it can reasonably be expected to be endorsed, based on the usage of reasons the affected party accepts, and methods of reasoning generally accepted as logically valid.

Rawls argues that we have a natural duty to mutually respect one another, apart from any obligations generated by social arrangements. He uses "duty" and "obligation" as technical terms – the former obtaining automatically amongst normal adults, apart from an agent's voluntary action, and the latter obtaining qualifiedly, when an agent participates in a particular practice. Rawls implies that many duties seem self-evident, but supports several by arguing they would be endorsed by original position agents. He cites "the duty of helping another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself; the duty not to harm or inure another; and the

[32] *TJ* 513.

duty not to cause unnecessary suffering."[33] And relevant to our purposes, he explains the duty of mutual respect in great detail.

> This is the duty to show a person the respect which is due to him as a moral being, that is, as a being with a sense of justice and a conception of the good… Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conceptions of the good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected.
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> When called for, reasons are to be addressed to those concerned; they are to be offered in good faith, in the belief that they are sound reasons as defined by a mutually acceptable conception of justice which takes the good of everyone into account. Thus to respect another moral person is to try to understand his aims and interests from his standpoint and to present him with considerations that enable him to accept the constraints on his conduct.
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> Now the reason why this duty would be acknowledged is that although the parties in the original position take no interest in each other's interests, they know that in society they need to be assured by the esteem of their associates. Their self-respect and their confidence in the value of their own system of ends cannot withstand the indifference much less the contempt of others. Everyone benefits then from living in a society where the duty of mutual respect is honored. The

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[33] *TJ* 98.

> cost to self-interest is minor in comparison with the support for the sense of one's own worth.[34]

Thus, respecting a moral agent requires adopting their perspective, taking their interests seriously, and justifying decisions that impact their welfare and liberty using reasons and modes of reasoning they can appreciate. This all has bearing on the ways in which citizens should go about thinking through and deicing serious political questions. And from the perspective of the original position, an agent would endorse such a duty upon recognizing how essential respect from others is to enabling respect for one's self.

Legitimacy

Intimately linked with but distinct from justice, and grounded in respect, legitimacy refers to the moral status of a claimed authority to coerce. That is, a state is legitimate to the extent that it has satisfied whatever theory-specific conditions are necessary to deem its enforcement of law morally permissible. As Rawls explains, conflating legitimacy with justice would be a mistake.

> A legitimate king or queen may rule by just and effective government, but then they may not; and certainly not necessarily justly even though legitimately. Their being legitimate says something about their pedigree: how they came to their office. It refers to whether they were the legitimate heir to the throne in

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[34] *TJ* 297.

> accordance with the established rules and traditions of, for example, the English or the French crown.[35]

While this explanation illustrates the distinction well, liberal legitimacy, as opposed to royal legitimacy, must account for liberals' commitment to the premise that legitimate law must somehow originate in the citizenry. Whether actually or hypothetically, the governed are to consent to the laws to which they are subject, enabling them in some real sense to rule themselves.

Thus, legitimacy is largely a function of procedural components—of judging the nature and adequacy of the link between the involvement and assent of the governed and the laws to which they submit. But for Rawls, legitimacy also contains substantive features. He challenges Jurgen Habermas's conception of legitimacy as purely procedural, and argues no matter their pedigree, "laws cannot be too unjust if they are to be legitimate."[36] And beyond individual laws, a political order must possess a constitution that is adequately just, such that majoritarian decisions that run afoul of justice are reliably kept in check, before the state can be considered legitimate.[37]

The link between justice, respect and legitimacy becomes apparent when we examine Rawls's liberal principle of legitimacy. This principle stipulates that "the exercise of political power is fully proper only when exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be

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[35] *PL* 427.
[36] *PL* 429.
[37] *PL* 429.

expected to endorse in light of principles and ideals acceptable to their common human reason."[38] Given that Rawls's original position is designed to produce the conclusions of equally situated free persons, a state governing a people with democratic self-understandings must follow a constitution consistent with its output. That is, such a state must possess a constitution that guarantees an adequate system of liberty and generically satisfies reciprocity in economic policy (a consideration of justice), and be justifiable to all affected (a consideration of respect) before it can be minimally legitimate.[39] And as we will see, while legitimacy does not require full embodiment of justice as fairness, it does need to be generically liberal to adequately respect a citizenry living under conditions of reasonable disagreement.

It is important to note that while justice and legitimacy share the above link, it is not the case that when one is satisfied, the other necessarily follows. "At some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy, and so will the injustice of the political constitution itself."[40] For example, given its grave unjustness, even were it to satisfy a requirement of popular recognition, adequate democratic support, or some other account of legitimacy, it would seem counterintuitive to qualify Hitler's Germany as legitimate. Instead, such a state had drifted so far from any plausible conception of justice that it precluded legitimacy altogether. We might imagine an instance of a just but illegitimate *"law"*— one that perhaps attempts to grant an

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[38] *PL* 137.
[39] As explained in *The Law of Peoples*, the standards of legitimacy are looser for undemocratic peoples.
[40] *PL* 428.

oppressed minority equal legal rights, but is simply the declaration of a concerned philosophy department. Carrying with it little politically-based moral or practical force, such a declaration fails to involve the citizenry to which it is intended to apply. It lacks the necessary pedigree needed to legitimate enforcement, for it is not pursuant to and in accord with a constitution. This is the case even though it may be clearly consistent with any plausible conception of justice. Thus, it seems accurate to insist that a state must be adequately just before it can enjoy legitimacy, and that just policies require some legitimating procedure to carry full binding force.

Stability

Stability generically refers to a state's ability to self-generate internal corrective support. More is of course necessary to achieve generic stability – a minimally functioning economy, some degree of peace, a citizenry possessing a minimal threshold of certain political virtues – but here we are speaking of stability dependent on citizens' propensity to internalize a society's values, and in turn perpetuate its existence, responding to disruptions and returning to equilibrium without external correction. Note, however, that Rawls typically speaks of stability "for the right reasons" or "of the right sort," which necessarily presupposes public and just background institutions, and rational assent, as opposed to support that might be generated via manipulation or coercion. Thus, a state is stable to the extent that its citizens are prone to buy into the core conception of justice implicit in its structure, and consequently extol, support, defend, and perpetuate it.

> In this context stability means that however institutions are changed, they still remain just or approximately so, as adjustments are made in view of new social circumstance. The inevitable deviations from justice are effectively corrected or held within the tolerable bounds by forces within the system. Among these forces I assume that the sense of justice shared by the members of the community has a fundamental role. To some degree, then, moral sentiments are necessary to insure that the basic structure is stable with respect to justice.[41]

Given that stability must be for the right reasons, and must engage citizens' moral sentiments, publicity is essential. Publicity refers to a state's transparency, both in regard to its interworkings and its justification. That is, a state is public to the extent that its laws and regulations are open to all and widely known, and to the extent that the reasons its officials use within their own minds to justify the state's basic structure, as well as particular laws, are identical with the justifications they offer the citizenry. "Government House" Utilitarianism—where officials are moved by and govern according to utilitarian dedications, but offer a disingenuous tale of the intrinsic justification of rights for public consumption—for example, fails on the second feature of such a requirement, even when satisfying the first feature.[42] Since we desire stability grounded in rational assent, or for the right reasons, publicity is essential if citizens are to be able to assess and affirm those reasons. And as noted in the quote above, Rawls expects this to be more than a mere intellectual endeavor, and considers the engagement of our moral sentiments essential to

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[41] *TJ* 401.
[42] Kymlicka, Will. *Contemporary Political Philosophy, Second Edition.* Oxford, UP, 2002: 31.

generating and sustaining the allegiance necessary to effectively respond to destabilizing forces.

Publicity is further appreciated and contributes to stability in that public knowledge of a society's laws and underlying principles enables citizens to make informed decisions in light of what is expected of themselves and others. With accurate expectations of what one's society will permit, reward, disallow and punish, publicity enables citizens to plan and effectively carry out their life plans. "The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible. There is a common basis for determining mutual expectations."[43] Publicity also encourages mutual trust. It enables a shared understanding of what is considered just and unjust, which bolsters feelings of shared identity and consequently solidarity.[44]

> For publicity allows that all can justify their conduct to everyone else (when their conduct is justifiable) without self-defeating or other disturbing consequences… It helps to establish that a well-ordered society is one activity in the sense that its members follow and know of one another, that they follow the same regulative conception; and everyone shares in the benefits of the endeavors of all in ways to which each is known to consent.[45]

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[43] *TJ* 49.
[44] *TJ* 49.
[45] *TJ* 510.

But publicity alone is not enough to guarantee stability. A polity must obviously be just, but also be grounded in principles consistent with its citizens' psychologies, such that its precepts are easily reinforced. For Rawls, at the heart of human moral psychology is "a tendency to answer in kind."[46]

> Now this idea is a deep psychological fact. Without it our nature would be very different and fruitful social cooperation fragile if not impossible… If we answered love with hate, or came to dislike those who acted fairly toward us, or were averse to activities that furthered our good, a community would soon dissolve."[47]

Indeed, we would expect beings lacking our capacity for reciprocity to be incapable of basic social cooperation. Thankfully though we possess a tendency to adopt one another's interests, or to at least shape our interests in a manner compatible with others' interests, at least when others demonstrate they are willing to do the same. Thus, a conception of justice is stable if it is compatible with these basic psychological facts, and its embodiment in a society tends to reinforce these dispositions, generating a sense of justice that leads citizens to promote it.[48] Consequently, "the most stable conceptions of justice are presumably those for which the corresponding sense of justice is most firmly based on these tendencies."[49]

For example, Rawls argues that justice as fairness is better positioned to generate a requisite degree of stability than utilitarian accounts of justice on grounds that

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[46] *TJ* 433.
[47] *TJ* 433.
[48] *TJ* 119.
[49] *TJ* 433.

utilitarianism does not adequately engage our capacity for reciprocity, but instead relies on an unrealistic assessment of our capacity for sympathy.[50] Indeed, contract views in general are superior to utilitarian views because citizens are more likely to be allegiant to the state for the sake of one another, than for the sake of an abstract aggregate utility pool. For this reason justice as fairness enjoys superior intellectual appeal and endurance, and also because it is more clearly articulated than utilitarian accounts. Rawls even argues that Mill appears to have agreed with this assessment, even if he did not realize he was arguing in favor of the difference principle (or something similar), as opposed to the utility principle.[51]

Two potential sources of instability, both variants of the assurance problem, are the worry that one is contributing more than others, and the worry that should one do what is asked of him, he will become disadvantaged. For example, in the case of the former, unless one is assured that others are paying their fair share of the tax burden, it is tempting to not pay one's own fair share. With the latter, unless one nation is assured another is disarming, it is difficult to support disarming one's own nation.[52] Rawls argues that both of these sources of instability can be headed off when citizens can be convinced to embrace their natural duty "to support and further just institutions."[53] This duty requires that we "comply with and do our share" within existing just institutions, and "assist in the establishment of just arrangements when they do not exist, at least when this

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[50] *TJ* 437.
[51] *TJ* 439.
[52] *TJ* 296.
[53] *TJ* 293.

can be done with little cost to ourselves."[54] Thus, to the extent that a conception of justice or a component thereof encourages internalization of the natural duty to support and further just institutions, it itself is more or less stable. And given that original position agents would endorse this duty, and the original position is a key component of justice as fairness, justice as fairness is well poised to encourage this duty in a citizenry organized in accordance with it.

But to be clear, while stability is a highly important value, and an essential criterion of any workable conception of justice, it must always be balanced against other values. Further, Rawls does not claim that justice as fairness *maximizes* stability, and only requires that a candidate conception be stable enough. "I do not contend then that justice as fairness is the most stable conception of justice. The understanding required to answer this question is far beyond the primitive theory I have sketched. The conception agreed to need only be stable enough."[55] But he does spend much time and space emphasizing the importance of stability, and argues that original position agents would affirm this emphasis.

> Other things equal, the persons in the original position will adopt the more stable scheme of principles. However attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it.[56]

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[54] *TJ* 294.
[55] *TJ* 441.
[56] *TJ* 398.

But while stability is highly desirable and a requisite degree is necessary, Rawls explicitly states that "to be sure, the criterion of stability is not decisive."[57]

Last, we should note a just regime's ability to generate stability over time. Rawls argues that even were a just constitution initially endorsed only as a compromise or a modus vivendi, over time its rational appeal, the good it produced and the virtues it generated would convince citizens to mold their comprehensive doctrines in line with the demands of justice. For such a state would protect citizens' basic rights, guarantee resources that made exercise of those rights possible, and in light of entrenched pluralism, remove "from the political agenda the most divisive issues, serious contention about which much undermine the bases of social cooperation."[58] Personally benefitting all and minimizing sources of division, such a society would encourage "the virtues of tolerance and being ready to meet others halfway, and the virtue of reasonableness and the sense of fairness."[59] Rawls argues that this gives us good reason to think that citizens would normally prioritize their political values when they come into conflict with their comprehensive doctrines, for it is the just political framework that produces the great good of making "fair social cooperation possible on a footing of mutual respect."[60] Simple pluralism would slowly transition into reasonable pluralism, and citizens would

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[57] *TJ* 399.
[58] *PL* 157.
[59] *PL* 157.
[60] *PL* 157.

have good reason to develop a workable compromise when their comprehensive doctrines came into conflict with their political obligations.[61]

We now have a clearer picture of liberalism in general, Rawlsian Liberalism in particular, as well as what the concepts of justice, respect, legitimacy, and stability entail. We also have a better understanding of the relationships amongst Rawls's works, as well as the relationships amongst these key concepts. These understandings will prove essential as we continue into the next chapter, where I explain exactly what public reason is, and why I think Rawls's relevant standards for citizens and public officials contain an ambiguity.

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[61] *PL* 164.

CHAPTER II:
RAWLS'S IDEA OF PUBLIC REASON: ACCORDING TO THE PRIMARY TEXTS

Abstract

Chapter two explains what public reason is, and lays out Rawls's conception according to his original works. The final section presents evidence that Rawls implicitly argues for differing moral standards concerning public reason, and a case is made for the exegetical basis of Public Judgment.

The Fact of Reasonable Pluralism and the Implications for Stability and Legitimacy

As mentioned last chapter, the "circumstances of justice" include the fact facing most contemporary societies, that while resources are available, they are limited. Modern peoples are generally not plagued by extreme scarcity, but nor are they generally blessed with extreme abundance. And while citizens' pursuit of these limited resources might ordinarily lead to conflict, their efforts can be brought into harmony for the betterment of all when institutions are arranged justly. However, a second feature of the circumstances of justice, not mentioned last chapter, concerns the limits of human reason. Unfortunately, our imperfect mental faculties are often exacerbated by bias and self-interestedness. But even in our finest moments, when largely free of these clouding hindrances, humans remain afflicted by what Rawls would come to call the "burdens of judgment," which inevitably lead to what Rawls would come to call the "fact of reasonable pluralism." Explaining the circumstances of justice in *TJ*, Rawls writes the following.

> [In addition to the standing fact of limited availability of resources] I also suppose that men suffer from various shortcomings of knowledge, thought, and judgment. Their knowledge is necessarily incomplete, their powers of reasoning, memory, and attention are always limited, and their judgment is likely to be distorted by anxiety, bias and a preoccupation with their own affairs. Some of these defects spring from moral faults, from selfishness and negligence; but to a large degree,

> they are simply part of men's natural situation. As a consequence individuals not only have different plans of life but there exists a diversity of philosophical and religious belief, and of political and social doctrines.[62]

By *PL* Rawls would come to think that a plurality of comprehensive doctrines is inevitable even under optimal conditions. But even though he recognized the above in *TJ*, he had initially hoped that justice as fairness could be endorsed by the vast majority of citizens as what he would later recognize as a partially comprehensive view. He argued that justice as fairness, as a political design that aligned with the nature of citizens as free equals, would enable unparalleled personal fulfillment, and thus all would come to see citizenship as a required and fundamental expression of their moral personality. They would come to see doing justice as central to their highest good, and this would consequently generate great and enduring stability. But Rawls soon realized that this was a miscalculation. Citizens living under conditions roughly approximating justice as fairness commit to a plurality of worldviews, with many relegating their political roles to a secondary status. Why might this be the case?

Though he clearly recognized their influence in *TJ*, Rawls conceded in *PL* that he had underestimated the propensity of mitigating factors to skew human judgment. Even when persons reason at their very best, they remain beleaguered by certain unavoidable hindrances that inevitably preclude consensus. These burdens of judgment which stand in the way of consensus even for the intelligent, sincere and diligent include the complexity

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[62] *TJ* 110.

of empirical evidence, disagreement over how to rank and weigh agreed upon evidence, conceptual vagueness inherent to language, the influence of our unique experience and normative considerations on how we make assessments, as well as the fact that choosing and balancing values from the available pool causes some values to be left unrealized, thus rendering our perspectives hopelessly suboptimal.[63] Note however that Rawls does not argue that these burdens preclude individuals from arriving at true judgments on their own, but they only frustrate the possibility of everyone arriving at the same view – they are burdens on the *public* exercise of reason. Thus, absent coercion, disagreement over widely encompassing metaphysical and ethical systems is inevitable.[64] Equally intelligent, sincere and epistemically virtuous persons will disagree as to the ultimate nature of the universe, mankind's place in it, and how we should behave. The "fact of reasonable pluralism," then, is a permanent feature of any free society. A main hope of *TJ* therefore seemed destined to fail. Justice as fairness will not *so* align with our nature and moral psychology as to fully overcome the above inevitable disagreement, and will therefore be unable to generate the degree of wide and deep stability he had envisioned.

This fact of reasonable pluralism threatened to preclude legitimacy as well. Recall from last chapter that legitimacy concerns an entity's moral authority to coerce persons, and that this authority is derived from both following a proper procedure and arriving at substantively proper outcomes. Legitimacy is grounded in respect, respecting a person at the very least entails justifying to them conclusions or actions that materially affect their

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[63] *PL* 56.
[64] *PL* Xli.

interests, and justifying a conclusion or action entails supporting it with reasons and ways of reasoning the parties concerned mutually endorse. Rawls captures these requirements with his principle of liberal legitimacy. Consistent with liberalism's longstanding insistence that citizens somehow consent to the structure of their government and the content of the laws to which they are subject, that principle states that "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason."[65] Note that this principle suggests a substantive aspect to legitimacy, consistent with the acknowledged link between legitimacy and justice discussed last chapter. Given explicit recognition of the perspective of free equals, legitimacy for Rawls would seem to require a constitution that roughly models what original position agents would endorse one that embodies a conception of justice roughly resembling his favored conception, justice as fairness.

But as we will see below, legitimacy also contains a procedural component. It requires that citizens justify their political decisions to one another.[66] When explaining justification in *TJ*, Rawls speaks of the need for rational deliberation that appeals to commonly held values—to shared assumptions—and distinguishes genuine justification from mere proof.

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[65] *PL* 137.
[66] *LP* (IPRR) 137.

> Ideally, to justify a conception of justice to someone is to give him a proof of its principles from premises that we both accept, these principles having in turn consequences that match our considered judgments. Thus mere proof is not justification. A proof simply displays logical relations between propositions. But proofs become justification once the starting points are mutually recognized, or the conclusions so comprehensive and compelling as to persuade us of the soundness of the conception expressed by their premises.[67]

Here Rawls casts the ideal justificatory situation as one in which the three main components of deliberation overlap between interlocutors: shared premises, mutually endorsed logical structure, and shared acceptance of the implications in light of a wide range of considered convictions. Parties can come to mutually endorse a conception of justice either from the bottom up—by erecting a logical structure with shared premises—or from the top down—by articulating a conception that so well captures shared considered convictions it earns their allegiance. However, Rawls's method of justification is of course reflective equilibrium.

Recall that reflective equilibrium entails bringing into alignment fixed ethical axioms with general organizing principles.[68] Through a process of abduction, considered convictions are used to formulate and revise overarching principles, and overarching principles at all levels of generality check considered convictions. This back-and-forth, top-down, and bottom-up process of articulation, consideration, reevaluation and revision

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[67] *TJ* 508.
[68] *JFR* 29.

strives for coherence and consistency in a way that enables one to justify one's views to oneself, and ultimately to others. Bringing into alignment one's own political axioms with ordering political principles achieves "narrow" reflective equilibrium. When such a justification is confirmed by one's comprehensive doctrine, one enjoys "full justification," which is to say that one's political conception can be represented as rationally consistent with one's comprehensive view. "In this case, the citizen accepts a political conception and fills out its justification by embedding it in some way into the citizen's comprehensive doctrine as either true or reasonable, depending on what that doctrine allows."[69] The next step is to generate a "pro tanto" justification – *one based solely on public reasons* – articulated to share with others in the hope that adherents to a wide range of comprehensive doctrines will be able to endorse and consequently incorporate into their own views.[70] Citizens are to then publicly offer and consider one another's pro tanto justifications, which enables them to take seriously not only what they personally take to be unshakable political truths, but also the axioms and conceptions of justice others endorse.[71] Doing so exposes all to a range of carefully considered views that will hopefully mold everyone's conception in a more reasonable direction. Successfully revising one's conception of justice in light of the views of others achieves "wide" reflective equilibrium. And finally, after much deliberation and revision, when all are able to mutually endorse a conception of justice that is confirmed from the

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[69] *PL* 386.
[70] *PL* 389
[71] *JFR* 30.

perspective of their diverse comprehensive doctrines, a "public" justification has been given, and "full reflective equilibrium" (which is distinct from the full *justification* cited above) occurs. Full reflective equilibrium is achieved "when all the reasonable members of political society carry out a justification of the shared political conception by embedding it in their several reasonable comprehensive views."[72]

> In such a society not only is there a public point of view from which all citizens can adjudicate their claims, but also this point of view is mutually recognized as affirmed by them all in full reflective equilibrium.[73]

Thus, consistency is attained both within citizens internally between their comprehensive and political commitments, and among citizens externally concerning their conceptions of justice. This overlapping consensus can then itself serve as further justification for the shared political view.

Notice that justification occurs in at least two ways. First, when striving to achieve narrow reflective equilibrium, the aim is to justify one's views to one's self. When a person achieves this state, their considered convictions are rationally ordered, and an ordering logic is made explicit that makes the view consciously endorsable. The other sort of justification occurs among persons. When striving to achieve full reflective equilibrium, widely endorsed convictions are coherently organized, and again, an organizing logic is articulated that makes the view publicly affirmable. By first justifying one's views to one's self, and then to one another, they logically vindicate the coherence

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[72] *PL* 387.
[73] *JFR* 31.

of their shared conception of justice. We produce moral principles through an exercise of practical reason for the goal of mutual intelligibility and justification. In this way the community of free equals establishes their freedom and equality by realizing their potential to collectively self-legislate according to principles endorsable by a common human reason.

Notice that when attempting to justify one's view to others, while one's political conception is ultimately grounded in and affirmed by one's comprehensive doctrine, it is simultaneously grounded in and affirmed by a mutually endorsed public perspective. Citizens openly recognize the underlying pluralism, but do not submit their comprehensive views for political purposes – they rely on *public* arguments instead.

> A crucial point here is that while the public justification of the political conception for political society depends on reasonable comprehensive doctrines, this justification does so only in an indirect way. That is, the express contents of these doctrines have no normative role in public justification; citizens do not look into the content of others' doctrines, and so remain within the bounds of the political. Rather, they take into account and give some weight to only the fact—the existence—of the reasonable overlapping consensus itself.[74]

Thus, we can begin to see how Rawls reconciles stability and legitimacy with the fact of reasonable pluralism. He essentially rewrote the latter third of *TJ*, repackaging justice as fairness as a freestanding political module to which adherents to a wide range of

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[74] *PL* 387.

reasonable comprehensive doctrines could rationally commit, despite their doctrinal differences.

While in *TJ* justice as fairness is offered as a quasi-comprehensive doctrine, in *PL* it serves as a thin political conception of justice only, intentionally lacking content unnecessary for the task of addressing political matters, freeing citizens to work it into their worldviews without sacrificing their existing comprehensive commitments. And given the wide appeal of its content, we could expect a range of citizens to be able to endorse justice as fairness from the perspective of their otherwise conflicting comprehensive views.

> Thus, a main aim of *PL* is to show that the idea of the well-ordered society in *Theory* may be reformulated so as to take account of the fact of reasonable pluralism. To do this it transforms the doctrine of justice as fairness presented in *Theory* into a political conception of justice that applies to the basic structure of society.[75]

This alteration partially addressed the stability problem by making justice as fairness's success no longer contingent on the full buy-in of the vast majority. Citizens were now free to recognize the rational appeal of justice as fairness, and fully endorse it, but given its newly limited role, remain allegiant to their comprehensive views. However, the trouble caused by the fact of reasonable pluralism was not fully mitigated. Even if justice as fairness is *compatible* with a wide range of comprehensive doctrines, and attractive to

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[75] *PL* xli.

many, citizens will and do disagree over which conception is best. That is, just as we could not expect the vast majority to converge on justice as fairness as a quasi-comprehensive view, we cannot be certain that the vast majority will converge on justice as fairness as a political conception either, for the burdens of judgment afflict questions concerning justice just as pervasively as they afflict questions concerning comprehensive doctrines.

However, all disagreement is not *reasonable* disagreement. Disagreement simpliciter can occur for any number of reasons, including reasons we have little epistemic obligation to take seriously, and consequently reasons we have little moral obligation to take seriously. For example, disagreement over an issue could persist because one party allows irrational biases to override their better judgment. Or because one party simply refuses to examine relevant evidence. Reasonable disagreement, on the other hand, persists even when equally intelligent and epistemically diligent persons largely immune from personal biases use their honed intellectual abilities to arrive at a coherent position. The parties know how to gather and examine evidence, they avoid logical missteps, and they spend adequate time and effort applying their faculties to the issue. Yet they continually arrive at differing conclusions. Reasonable disagreement, then, is the product of the burdens of judgment, not a lack of sincerity, good will or intellectual skill. And while we might expect disagreement simpliciter to produce camps aligning with a wide range of conceptions of justice, Rawls argues that reasonable disagreement will confine itself to a family of generically liberal conceptions, all of

which will be adequately reasonable. In *TJ* Rawls argued that reasonable comprehensive doctrines can be identified in the following way.

> As a rough rule a conception of justice is reasonable in proportion to the strength of the arguments that can be given for adopting it in the original position. This criterion is, of course, perfectly natural if the original position incorporates the various conditions which are to be imposed on the choice of principles and which lead to a match with our considered judgments.[76]

Just as original position agents would not endorse libertarianism or communism, nor would citizens merely reasonably disagreeing. However, in *PL* Rawls explains that while the original position is an excellent heuristic device, it is particular to justice as fairness, and therefore needn't be necessarily used when developing one's own conception of justice. While all might not converge on justice as fairness, with his two principles of justice as precisely articulated, we can expect reasonable persons to endorse a range of minimally reasonable and generically liberal conceptions, all of which will be committed to the idea of citizens as free equals, "to society as a fair system of cooperation over time," and contain three features:

> First, a list of certain basic rights, liberties, and opportunities (such as those familiar from constitutional regimes);

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[76] *TJ* 310.

> Second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to the claims of the general good and perfectionist values; and
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> Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms.[77]

This expected agreement upon similar, if not identical conceptions, helps Rawls to more fully solve the stability problem, as well as to address the legitimacy problem.

Rawls explains that in a well-ordered society everyone shares a core commitment to and understanding of fundamental political values. These values are embodied and given by the acceptably liberal and reasonable conceptions of justice discussed above.[78] Under both nonideal and ideal conditions citizens will reasonably disagree over a range of issues, and this shared understanding of justice creates a basis of agreement from which disagreements can be addressed, enabling justification, and consequently respect and legitimacy. That is, while disagreement over an issue may persist, this shared perspective at least enables citizens to justify their favored positions to one another, consequently bolstering the legitimacy of a vote. But even under ideal conditions, where full reflective equilibrium and public justification have been achieved, citizens will presumably continue to disagree over some matters, and will in any case need to publicly sort through new issues when they arise.

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[77] *PL* 141.
[78] *JFR* 27.

However, it is important to emphasize that Rawls is only dealing with and intendeds to only accommodate reasonable citizens committed to reasonable comprehensive doctrines, defined as those that recognize the burdens of judgment and consequently refrain from requiring adherents to impose their nonpublic judgments on others via coercive state power.[79] Adherents to certain comprehensive doctrines might conclude that the transcendent values of their doctrines override their political obligations. Rawls concedes that there is little we can do to criticize such persons, for they may sincerely believe their eternal soul is at stake. He explains in IPRR that we can only say that their doctrines are not reasonable, and hope that the numbers committing to such views will be small enough such that the difficulties they cause are insignificant.

> [Such citizens'] doctrines may override or count for naught the political values of a constitutional democratic society. But then the citizens cannot claim that such doctrines are reasonable. Since the criterion of reciprocity is an essential ingredient specifying public reason and its content, political liberalism rejects as unreasonable all such doctrines.

Further, just as Rawls is confident in *LP* that just interaction with illiberal states will draw decent peoples into the liberal democratic fold, here he is confident in the power of living under just institutions to persuade citizens to support a liberal

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[79] *PL* 138.

constitutional regime, even when their favored doctrine declines as a result. How is this possible?

> Here the answer lies in the religious or nonreligious doctrine's understanding and accepting that, except by endorsing a reasonable constitutional democracy, there is no other way fairly to ensure the liberty of its adherents consistent with the equal liberties of other reasonable free and equal citizens… a religious doctrine may say that such are the limits God sets to our liberty; a nonreligious doctrine will express itself otherwise.[80]

Reasonable comprehensive doctrines will not require that transcendent values trump political obligations, and by definition, they will mesh with the demands of liberal justice.[81]

> [A] true judgment in a reasonable comprehensive doctrine never conflicts with a reasonable judgment in its related political conception. A reasonable judgment of the political conception must still be confirmed as true, or right, by the comprehensive doctrine. It is, of course, up to citizens themselves to affirm, revise, or change their comprehensive doctrines.[82]

On the subject of truth, it is important to emphasize that truth is neither Rawls's aim, nor the aim of citizens deciding political matters in a manner consistent with Rawlsian Liberalism. For Rawls wants to avoid entrenched philosophical debate over

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[80] *PL* (IPRR) 460.
[81] *PL* (IPRR) 484.
[82] *PL* (IPRR) 483.

exactly what truth is. Rather, whether concerning an ordering of political values, a policy position, or a conception of justice, we are to seek the most reasonable. Value orderings, policy positions and conceptions of justice can be *more or less* reasonable, for the reasonable is not binary as is the true. This is reflected in Rawls's view that while justice as fairness is the most reasonable conception of justice, others remain acceptably reasonable nonetheless. Further, while some, such as Habermas, suggest that the deliberative democratic process is the best path to truth, Rawls makes no such metaphysical claim. Political liberalism sees the public justificatory process as essential to stability and legitimacy. But it leaves room for citizens to find truth via nonpublic avenues, and only claims to produce conclusions that are the most reasonable. It leaves citizens to decide for themselves what the concept of truth entails, how it is best discovered, and which comprehensive doctrine deserves a particular citizen's allegiance.

> Political liberalism does not use the concept of moral truth applied to its own political (always moral) judgments. Here it says that political judgments are reasonable or unreasonable; and it lays out political ideals, principles and standards as criteria of the reasonable. These criteria in turn are connected with the two basic features of reasonable persons as citizens: first, their willingness to propose and to abide by, if accepted, what they think others as equal citizens with them might reasonably accept as fair terms of social cooperation; and, second, their willingness to recognize the burdens of judgment and accept the consequences thereof. For the political purpose of discussing questions of constitutional essentials and basic justice, political liberalism finds this idea of the

> reasonable sufficient. The use of the concept of truth is not rejected or questioned, but left to comprehensive doctrines to use or deny, or use some other idea instead.[83]

However, it would be a mistake to conclude that Rawlsian Liberalism entails skepticism about the possibility of truth, or that it requires citizens to be skeptical about their own comprehensive doctrines. Instead, it leaves questions concerning the nature of truth and which comprehensive doctrine is most plausible for individuals to decide, and only asks that in light of entrenched reasonable disagreement and our shared view of one another as free equals that we set these matters aside for political purposes. Rawls "neither confirms nor denies (nor uses) the concept of truth."[84] He remains silent on the matter, encouraging neither dogmatism nor skepticism.

> Political liberalism does not question that many political and moral judgments of certain specified kinds are correct and it views many of them as reasonable. Nor does it question the possible truth of affirmations of faith. Above all, it does not argue that we should be hesitant and uncertain, much less skeptical, about our own beliefs. Rather, we are to recognize the practical impossibility of reaching reasonable and workable political agreement in judgment on the truth of comprehensive doctrines, especially an agreement that might serve the political

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[83] *PL* 395.
[84] *PL* 94.

> purpose, say, of achieving peace and concord in a society characterized by religious and philosophical differences.[85]

That political purpose of achieving stability for the right reasons, as well as legitimacy under conditions of reasonable pluralism, is enabled by the common perspective generated when citizens converge on the acceptably liberal conceptions of justice discussed above. And the norms governing this process are articulated by Rawls's idea of public reason.

Rawls's Idea of Public Reason

Public reasoning refers to the cognitive process of deciding an issue in a way that none could reasonably reject, utilizing reasons that none could reasonably reject. This can occur within an individual citizen's mind, or among citizens openly reasoning together. Both the deliberative process and the content must be of a sort that no person could reasonably reject. Accordingly, public reason requires one to carefully weigh mutually endorsed relevant considerations in accordance with the recognized rules of logic. Rawls argues that these requirements need only apply to citizens and officials deciding policy matters in the public political forum, and then only when discussing constitutional essentials and matters of basic justice. Fully exempt from the norms of public reason are

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[85] *PL* 63.

non-officials deliberating in a nonpublic forum. As Rawls says explicitly in IPRR and elsewhere, "the idea of public reason does not apply to the background culture with its many forms of nonpublic reason nor to media of any kind."[86] And while comparatively trivial matters, such as what to name a highway, might be decided simply by registering citizens' preference via a vote, the use of public reason is necessary for legitimacy when the stakes for citizens' liberty are highest. This isn't to say that the standards defended could not or necessarily should not be extended, but only that Rawls aims at the most pressing concerns, and leaves it to others to expand the scope of his project if need be.

Though he leaves the concepts largely unexplored due to their enormity, he does explain that the target of public reason concerns:

> (1) the fundamental principles that specify the general structure of government and the political process; the powers of the legislature, executive, and the judiciary; the limits of majority rule; and
>
> (2) the equal basic rights and liberties of citizenship that legislative majorities must respect, such as the right to vote and to participate in politics, freedom of thought and of liberty of conscience, as well as the protections of the rule of law.[87]

Given that the above are typically found in constitutions, the norms of public reason apply most pointedly to Supreme Court Justices, and then to lower judges, government

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[86] *LP* (IPRR) 134.
[87] *JFR* 28.

officials and candidates for office. Except for rare cases, such as referendums decided by popular vote, ordinary citizens are largely insulated from policy design and enforcement, and especially from constitutional design and amendment. Although officials are accountable to voters and to other officials, they more directly influence public policy, and are consequently in a position to most dramatically bolster or damage justice, respect, legitimacy and stability. They consequently bear amplified obligations. Rawls recognizes their differing degrees of obligation in a footnote in *PL* in which he contrasts his own view with Habermas's.

> Public reason in this text is the reasoning of legislators, executives (presidents, for example), and judges (especially those of a supreme court, if there is one). It includes also the reasoning of candidates in political elections and of party leaders and others who work in their campaigns, as well as the reasoning of citizens when they vote on constitutional essentials and matters of basic justice. The ideal of public reason does not have the same requirements in all these cases.[88]

The extent to which public officials satisfy the demands of public reason has great bearing on stability in a way that ordinary citizen compliance does not, for officials possess unique power to instigate or quell instability. For example, should an official publicly attempt to justify a serious policy decision using nonpublic reasons, opponents who do not share the official's comprehensive commitments may become excusably hostile toward the state, especially if the policy directly constrains their liberty. Using

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[88] *PL* 382.

nonpublic reasons precludes genuine justification, and consequently severely disrespects them, undermining state legitimacy as well. However, officials also possess the power to *mitigate* instability when rogue citizens reject their obligations pertaining to public reason. For example, were a group of voters to neglect public reason and attempt to foist their comprehensive views upon others via the state, elected representatives could still maintain state legitimacy and reassure losers in a vote by themselves practicing public reason.

However, though it may apply more forcefully to officials, the idea of public reason certainly regulates the decisions and deliberation of regular voting citizens as well.

> [I]deally citizens are to think of themselves as if they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact.[89]

Rawls argues that doing so does much to promote stability and the effectiveness of democracy, "and is vital to its enduring strength and vigor."[90] For when all practice public reason, mutual trust develops, civic friendship flourishes, and stability strengthens.

Now that we are clear as to public reason's general process, to which questions it applies, to whom it applies, and when it applies, we now turn to its content. When relevant parties are deciding relevant issues in relevant contexts, public reason requires that they do so by relying on methods of reasoning and reasons all can appreciate.

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[89] *PL* (IPRR) 445.
[90] *LP* (IPRR) 136.

> This means that in discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines—to what we as individuals or members of associations see as the whole truth—nor to elaborate economic theories of general equilibrium, say, if these are in dispute.[91]

Qualifying public reasons thus include the noncontroversial facts of science, the mundane truisms of common knowledge, as well as widespread convictions concerning clear cases of ethical right and wrong. Sporting torture, for example, is clearly and almost universally rejected as morally impermissible, so too is racism, and neither could be endorsed from behind the veil of ignorance. Thus, the propositions, "torturing for mere fun is morally impermissible" and "arbitrary discrimination based on ethnicity or race is morally unacceptable" are admissible. This much may seem obvious. But how might public reason facilitate deliberation over a more contested issue?

Rawls explains that specific values informing a political position on abortion, for example, would at least include "the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens."[92] However, since the metaphysical and ethical status of unborn developing humans remains contested, definitive substantive moral judgments concerning fetuses are excluded. While one could properly submit the premise, "human life has great value," one could not submit the premise, "fetuses possess souls from the moment of conception." This is not only because the former happens to be a general,

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[91] *PL* 224.
[92] *PL* 243.

nearly universally endorsed claim, while the latter happens to be a highly contested claim grounded in a contested worldview. But because one can reasonably reject the latter, but not the former. Even though ensoulment at conception may very well occur, this is not confirmed by our common human reason, and affirmation of this premise typically entails commitment to a comprehensive doctrine. But that human life has great value is built into our common understanding, and thus could not be reasonably rejected.

Additional public political values that Rawls argues are implicit in our democratic intuitions include "the values of equal political and civil liberty; fair equality of opportunity; the values of economic reciprocity; the social bases of mutual respect between citizens."[93] He also cites "a more perfect union, justice, domestic tranquility, the common defense, the general welfare, and the blessings of liberty for ourselves and our posterity."[94] He explains that each of these broader values will inform more specific values. Justice, for example, can include within it "equal basic liberties, equality of opportunity, ideals concerning the distribution of income and taxation, and much else."[95] And while moral autonomy is a concept too rich and contested to be part of public reason, political autonomy is an acceptably thin political value, and thus included.[96] Also included are corollaries to the idea of public reason itself – virtues citizens must embrace if their undertaking is to be optimally successful.

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[93] *PL* 139.
[94] *LP* (IPRR) 144.
[95] *LP* (IPRR) 144.
[96] *LP* (IPRR) 146.

> The values of public reason not only include the appropriate use of the fundamental concepts of judgment, inference, and evidence, but also the virtues of reasonableness and fair-mindedness as shown in abiding by the criteria and procedures of commonsense knowledge and accepting the methods and conclusions of science when not controversial.[97]

The Role of Nonpublic Reasons

Nonpublic reasons and values are those grounded in religious as well as secular comprehensive philosophical doctrines. These are "nonpublic" in the sense that they are only compelling to adherents to a given doctrine. For example, Christian scripture does little to seriously move most Muslims, scripture from the Koran does little to move most Christians, and scripture from the holy book of Scientology does little to move either Muslims or Christians. Reasons grounded in comprehensive secular doctrines are similarly ineffective at convincing nonadherents—they only serve as genuine reasons for those already committed to the doctrine. Kantian arguments, for example, do little to sway Utilitarians, Utilitarian arguments do little to sway Kantians, and Rossian arguments often do little to sway Kantians or Utilitarians. The point isn't that any reason contained within a comprehensive doctrine is necessarily nonpublic. Indeed, many public reasons will overlap among comprehensive doctrines. The point is while the burdens of judgment do not preclude convergence on any and all reasons, they do preclude

[97] *PL* 139.

convergence on expansive doctrines. Therefore, reasons embedded at a higher level within these doctrines, and consequently dependent on a network of complex and contested inferences, will often be nonpublic. But presumably all reasonable persons can appreciate the values of efficiency, liberty, and equality, which are implicitly embedded in our laws and institutions. While these values are sometimes supported with elaborate argumentation, they are endorsable from a perspective of freedom and equality, and do not require adherence to any specific comprehensive doctrine.

Given the picture I have painted thus far, one might believe at this point that Rawls requires citizens and officials to purge nonpublic reasons from the public political forum altogether. On the contrary, while he began very restrictive in *TJ*, his position on the appropriateness and role of comprehensive doctrines in political decision-making became increasingly permissive over time. Though Rawlsian Liberalism can generally be presented achronistically, the role of nonpublic reasons is one facet that warrants sequential explanation.

Though Rawls did not use the term "public reason" in *TJ*, as we saw at the beginning of this chapter, he recognized the burdens of judgment as part of the circumstances of justice, and developed a robust account of justification. Further, the Rawls of *TJ* explicitly required that liberty-limiting decisions be exclusively based on universally accessible reasons. He argued that fundamental liberties may be limited only for the sake of other liberties, and that this entails limiting them for the sake of what is presupposed by liberties, including a political order. And when one undertakes to show

that this condition has obtained, one's argument must be cast in a manner accessible to all.[98]

> [A policy limiting liberty of conscience, for example,] must be supported by ordinary observation and modes of thought (including the methods of rational scientific inquiry where these are not controversial) which are generally recognized as correct. Now this reliance on what can be established and known by everyone is itself founded on the principles of justice. It implies no particular metaphysical doctrine or theory of knowledge. For this criterion appeals to what everyone can accept. It represents an agreement to limit liberty only by reference to a common knowledge and understanding of the world. Adopting this standard does not infringe upon anyone's equal freedom. On the other hand, a departure from generally recognized ways of reasoning would involve a privileged place for the views of some over others, and a principle which permitted this could not be agreed to in the original position.[99]

Rawls points out that original position agents would also insist on "publicly recognized criteria to determine what counts as evidence."[100] And harshly responding to those who have used or would use the state to suppress freedom of thought, he writes, "it is a matter of dogma that faith is the life of the soul and that the suppression of heresy, that is,

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[98] *TJ* 187.
[99] *TJ* 187.
[100] *TJ* 188.

departures from ecclesiastical authority, is necessary for the safety of souls."[101] Further, while in *PL* Rawls would explicitly explain that freedom of speech precludes the ideal of public reason from ever becoming anything more than a moral duty,[102] here in *TJ* while arguing for a substantive commitment to religious liberty, Rawls even goes as far as to imply that the above requirements should be promoted by explicit constitutional mandate.

> [Parties to a constitutional convention] must choose a constitution that guarantees an equal liberty of conscience regulated solely by forms of argument generally accepted, and limited only when such argument establishes a reasonably certain interference with the essentials of public order. Liberty is governed by the necessary conditions for liberty itself… Where the suppression of liberty is based upon theological principles or matters of faith, no argument is possible."[103]

However, Rawls is quick to emphasize that the above only applies to political decision-making. Even here in *TJ*, he is careful to avoid overstepping the authority of political philosophy. "These principles of evidence are adopted for the aims of justice; they are not intended to apply to all questions of meaning and truth. How far they are valid in philosophy and science is a separate matter."[104]

Though Rawls for the most part excludes nonpublic reasons from public reason in *TJ*, in *PL* he allows for the inclusion of reasons grounded in comprehensive doctrines into the political forum when necessary to avoid an extreme injustice, or to save public reason

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[101] *TJ* 189.
[102] *LP* (IPRR) 136.
[103] *TJ* 190.
[104] *TJ* 188.

itself. This so-called "inclusive view" allows citizens to publicly include what they consider the basis of their political views—the grounding reasons from their comprehensive doctrines—"provided they do this in ways that strengthen the ideal of public reason itself."[105] A vibrant qualifying example is that of abolitionists who used religious argumentation to challenge slavery in the antebellum South.

> In this case the nonpublic reason of certain Christian churches supported the clear conclusions of public reason. The same is true of the civil rights movement led by Martin Luther King Jr., except that King could appeal—as the abolitionists could not—to the political values expressed in the Constitution correctly understood.[106]

Thus, in *PL* Rawls argues that comprehensive reasons may play a large justificatory role in public deliberation, but only when necessary to avoid potentially pervasive injustices that might eventually so erode just institutions as to prevent public reason from occurring at all. Rawls added that allowing citizens to disclose their grounding reasons can have the added benefit of bolstering stability. Neighbors revealing the reasons they have to buy into the overlapping consensus demonstrates that they are fully committed, and not laying strategically dormant to supplant liberalism with theocracy if given the chance.

In an article first published in the *University of Chicago Law Review* in 1997, "The Idea of Public Reason Revisited" (or IPRR), Rawls makes a series of clarifications, elaborations and adjustments. According to the editor of the expanded edition of *PL*, Rawls considered IPRR "the best statement of his views on public reason and political

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[105] *PL* 247.
[106] *PL* 250.

liberalism, especially regarding the compatibility of public reason with religious views."[107] In a dramatic shift from the inclusive view of *PL*, where nonpublic reasons were only admissible when necessary to save public reason itself, Rawls significantly loosened his standard in IPRR, creating the so-called "wide" view with the introduction of his "proviso." That proviso states:

> [R]easonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.[108]

Whereas under the inclusive view the burden was on the speaker to show that the inclusion of nonpublic reason was necessary to head off severe and deleterious injustice, under the proviso the burden can be dealt with after the fact, and only requires a supplementary justification in public language. Rawls insists though that his proviso is to only be invoked in good faith — that those who exercise this clause must fully intend to provide supplemental public justification in due course. But he sets aside the question as to exactly *when* it must be satisfied. Rawls also shields asserted comprehensive doctrines from scrutiny.

> [T]here are no restrictions or requirements on how religious or secular doctrines are themselves to be expressed; the doctrines need not, for example, be by some

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[107] *PL* (IPRR) 437.
[108] *LP* (IPRR) 152.

> standards logically correct, or open to rational appraisal, or evidentially supportable. Whether they are or not is a matter to be decided by those presenting them... They will normally have practical reasons for wanting to make their views acceptable to a broader audience.[109]

Rawls argues here, as he also does in *PL*, that the inclusion of comprehensive reasons in the public forum can bolster stability. When citizens engage in "declaration" – which involves publicly drawing connections between one's political conception and one's comprehensive doctrine[110]– subject to the requirements of his proviso, citizens come to see that others are deeply committed to the liberal project from the perspective of their comprehensive doctrine, and this reassurance inspires the deeper commitment of all.[111]

While IPRR opens the door to more widespread use of nonpublic reasons in the public political forum, it also contains sections that imply that their status is mainly symbolic. That is, Rawls often emphasizes the need to reason within a public frame, and from a public perspective, implying that while nonpublic reasons may be *expressed* in the public political forum, they are to carry little weight in citizens' decisions. This tension continues in *JFR*. Since in neither text does Rawls explicitly acknowledge the apparently divergent standards, below I spend some time establishing the ambiguity.

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[109] *LP* (IPRR) 153.
[110] *PL* (IPRR) 465.
[111] *PL* (IPRR) 464.

The Ambiguity: Public Representation v. Public Judgment

For the most part, reconstructing Rawls's work is relatively straightforward, for his views are incredibly well thought out, and carefully explained. However, on one point Rawls appears to present an ambiguity. That point concerns the role of nonpublic reasons in citizens' and officials' judgments – on the use of nonpublic reasons to actually decide constitutional essentials and matters of basic justice. On the one hand, Rawls seems to sometimes allow that citizens may decide such matters according to their comprehensive convictions. His proviso implies as much, given its focus on merely publicly vindicating positions that have been previously expressed in nonpublic language, and therefore presumably decided from a nonpublic perspective. As we will see next chapter, some contemporary theorists working in public reason have apparently interpreted Rawls as requiring only this much. Nicholas Wolterstorff, for one, objects that Rawls's standards on public reason are unfair to religious persons, for it is easier for secularists to *translate* their comprehensive views into political language. This implies that mere translation is all that is needed, and that actually *deciding* political issues from the perspective of one's comprehensive view is fully acceptable.

But Rawls also implies at times that citizens and officials are to *decide* qualifying issues from a public perspective. He suggests they are to develop a public framework from which they can think through such questions insulated from the direct influence of their comprehensive views. Though initially free and encouraged to use their reasonable comprehensive doctrines to develop a conception of justice, once robust enough, he

suggests they are to detach their conception from its comprehensive roots, take on the perspective of original position agents – *granted however much personal information is appropriate given the question at hand*[112] – immerse themselves in exclusively public reasons, and continue to mold their conceptions via reflective equilibrium until able to address nearly all issues from an almost exclusively public perspective.

The first approach to public reasoning, which allows one to actually decide political issues from a comprehensive perspective, I call Public Representation, or PR. PR is accomplished either by direct translation of one's comprehensive reasoning process into public language, or by erecting a supplementary public argument to support a conclusion arrived at by a nonpublic avenue. As allowed by Rawls's proviso, PR only requires one to advocate positions and provide public justifications one considers *adequately* reasonable, as opposed to positions and justifications one finds *most* reasonable. The second approach to public reasoning, which requires citizens and officials to extensively develop their conceptions of justice and answer political questions from that perspective, I call Public Judgment, or PJ. Consistent with many direct quotes, the aims of PJ are value orderings, positions, conceptions of justice, and policies one sincerely finds most reasonable, as opposed to merely adequately reasonable. Under PJ no translation or supplementation is necessary – citizens express their judgments in their already public form. Since Rawls's proviso alone strongly supports PR, and especially

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[112] See the four stage sequence of *TJ*, in which the veil of ignorance is incrementally lifted to reveal information appropriate to each decision stage: 1) selecting principles of justice, 2) the constitutional convention, 3) deciding legislation, and 4) executing laws. *TJ* 171-176.

since I argue in chapter four that PJ better promotes the values of respect, justice, legitimacy and stability, I focus here on establishing the plausibility of PJ as not only *consistent* with Rawlsian Liberalism, but as a standard that Rawls himself advocates.

First, the following quote from IPRR establishes that Rawls intends public reason to aim at positions sincerely considered *most* reasonable.

> [I]f, when [deliberation reaches an impasse], citizens simply invoke grounding reasons of their comprehensive views, the principle of reciprocity is violated. From the point of view of public reason, citizens must vote for the ordering of political values they sincerely think the most reasonable. Otherwise they fail to exercise political power in ways that satisfy the criterion of reciprocity.[113]

Not only are orderings of values to be sincerely considered most reasonable, but complete conceptions of justice as well.

> [C]itizens are reasonable when they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal

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[113] *LP* (IPRR) 168.

> citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position.[114]

Rawls goes on to explain that even when the above is satisfied, the result of a vote will surely fall short of what some consider most reasonable. But so long as everyone has advocated views they sincerely consider best, the result is legitimate. "Each thinks that all have spoken and voted at least reasonably, and therefore all have followed public reason and honored their duty of civility."[115]

Antedating the above, Rawls also argues in *PL* that when developing their conceptions of justice, citizens have a moral obligation to balance their values in a way that not only seems most reasonable to them, but in a way that they can sincerely imagine others considering reasonable as well.[116] Or at the very least, while one's balance may be one that others may reject, it must be a balance one can imagine a reasonable person endorsing. This emphasis on taking into account the internal deliberation of others would seem to support PJ, for if public reasoning only required translating one's comprehensive doctrine into public language, and allowed retention of an ordering of values determined by a nonpublic source, then Rawls would allow value orderings to be directly based on one's comprehensive doctrine. Instead, he requires that our value orderings accommodate the perspective of others—presumably a range of others—which necessitates adoption of a public point of view.

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[114] *PL* (IPRR) 446.
[115] *PL* (IPRR) 446.
[116] *PL* 253.

Further, in IPRR Rawls suggests that the meaning and ordering of our political values must be derived by exercise of our political reasoning, and cannot be too immediately deduced from our comprehensive doctrines. Rather than cobbling together an ordering of political values that best aligns with our comprehensive views, "we are required to first work to the basic ideas of a complete political conception and from there to elaborate its principles and ideals, and to use the arguments they provide."[117] That is, our political conceptions "are not puppets manipulated from behind the scenes by comprehensive doctrines," but instead fully freestanding and independent.[118] While we may use our comprehensive doctrines as guides when initially developing our conceptions of justice, the preceding indicates that once these conceptions are adequately formed, we are to detach and complete them using narrow and then wide reflective equilibrium, with the aim of establishing a freestanding exclusively political view.

Next, in *JFR* Rawls explains that the ideal of citizenship, which is based on our status as free equals and our shared commitment to settling political questions in a manner that enables mutual respect, has serious bearing on the influence of nonpublic reasons on our deliberation. "This ideal gives rise to a duty of public civility, one aspect of which directs us, when constitutional essentials and questions of basic justice are involved, to reason within the limits set by the principle of legitimacy."[119] Specifically, the limits set by the principle of legitimacy entail an agreement to "bar theological and

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[117] *LP* (IPRR) 146.
[118] *PL* (IPRR) 454.
[119] *JFR* 92.

other comprehensive doctrines from deciding" cases that concern or border on constitutional essentials and basic justice.[120] Note use of the phrase "from deciding," and how this implies that nonpublic reasons are to be excluded from internal and public deliberation.

Some might wonder, if Rawls does indeed intend for citizens to segregate their comprehensive from their public perspectives, how does he expect them to accomplish such a psychologically demanding feat? Rawls cites the deliberative processes of judges to illustrate the ease with which this might occur.

> Just as judges are to decide cases by legal grounds of precedent, recognized canons of statutory interpretation, and other relevant grounds, so citizens are to reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake.[121]

Just as judges set aside considerations of self-interest, bias, and comprehensive conviction, step into their role as judge and decide cases from that perspective, so too are the rest of us to set aside nonpublic values and reasons, step into our role as citizens, and decide serious political matters from that perspective. Of course it could be the case that judges simply represent their views in public form in their published opinions after arriving at them from a fully nonpublic route. And consequently perhaps all their example establishes for certain is the possibility of PR, not PJ. But the above quote

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[120] *JFR* 117.
[121] *PL* (IPRR) 478.

suggests that Rawls at least believes judges should practice something akin to PJ, and that citizens are expected to do the same.

Last, consider the following key quote from IPRR that seems to unequivocally support PJ, even as a matter of *defining* public reason.

> A citizen engages in public reason, then, when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also be expected reasonably to endorse.[122]

Note the explicit emphasis on deliberating from within the framework of a political conception one considers most reasonable. This seems to clearly contradict Rawls's proviso, which supports the view that citizens may decide issues from the perspective of their comprehensive doctrine, so long as public justifications are submitted to others when asked. And it seems to clearly support the conception of Public Judgment as I have articulated it above.

The tension on which this project is predicated should now be apparent. Rawls explicitly allows for the inclusion of nonpublic reasons into the public political forum, and sometimes implies that they may be used to actually decide serious political questions. But he also implicitly argues the contrary – that such reasons are to play no substantive role in actually deciding serious political questions. In chapter four I return to

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[122] *PL* (IPRR) 450.

this tension, this time judging the philosophical merits of PR and PJ, rather than simply establishing their Rawlsian roots. I explore what both offer in terms of promoting justice, respect, legitimacy and stability, and conclude that perhaps PR can best be understood as a baseline moral minimum, and PJ as a laudable, supererogatory ideal. But we now turn to the work of several contemporary political philosophers working in the area of public reason. We survey their thoughts on Rawls's work, as well as their own conceptions of public reason, to enable a deeper understanding of Rawls, and to facilitate more insightful analysis of PR and PJ come chapter four.

CHAPTER III:
CONTEMPORARY INTERPRETATIONS, CRITIQUES, AND REJOINDERS

Abstract

Chapter three presents the views of four contemporary liberal theorists working in the area of public reason – Nicholas Wolterstorff, Robert Audi, David Reidy, and Micah Schwartzman – which are used next chapter to inform evaluation and comparison of Public Representation and Public Judgment. Here these authors' views go largely unchallenged, and a brief contrasting summary is provided at the end.

Overview

Having clarified the relevant concepts surrounding public reason in chapter one, and made a good faith effort to explain Rawls's view on public reason according to the primary texts in chapter two, here the aim is to provide an adequate overview of the most important critiques of and rejoinders to Rawls's view relevant to the appropriate norms of public reason. Some address those norms as essentially moral, and some address them as essentially epistemic, though as we shall see, these approaches are not mutually exclusive. I explore the work of four authors, for the most part laying out their views without deep criticism, and conclude the chapter with an overview of the similarities and differences among them.

We first consider the view of Nicholas Wolterstorff, a prominent Christian political philosopher, who argues for the widespread inclusion of religious reasons in the public forum for two main reasons. First, because he interprets the demands of state neutrality and equal respect differently than does Rawls. Wolterstorff emphasizes the "one person, one vote" value of liberal democracy, and consequently finds it unfair to ask serious religious citizens to bracket their core convictions when deciding political matters. Second, Wolterstorff thinks religious reasons are actually *needed* to settle fundamental political questions, because he is pessimistic that an independent source of reasons capturing citizens' shared premises exists. He argues that citizens fundamentally disagree on many matters of basic justice, that they do not endorse an overlapping set of

shared premises, and therefore the best we can do is allow them to engage in political advocacy for whatever reasons they see fit, and simply tally their votes.

We next survey the work of an equally prominent Christian political philosopher who arrives at much different conclusions. Faithful to the Golden Rule and confident that a deity would endow humans with the ability to answer ethical questions by their secular lights, Robert Audi argues for strict restrictions on the use of religious reasons in the public forum, and indeed even for a *principle of secular motivation*. Audi however promotes the inclusion of considerations tied to some comprehensive doctrines, contra Rawls, so long as such reasons are *secular*. He supports his view first by attempting to discover and articulate the norms consistent with the justifying premises of liberal democracy, and second by reflecting on the conception of civic virtues appropriate for liberal democratic citizens. Audi's is a nuanced and incredibly helpful addition to public reason, and consequently much space is spent carefully unpacking his view.

Next we briefly explore a key section of a paper by David Reidy that introduces a new level of complexity to the apparent inconsistency in Rawls's view considered last chapter. He argues that Rawlsian public reason entails not only a sincerity, but a *motivational* requirement. On Reidy's view, we satisfy our relevant obligations when we sincerely believe that the public reasons we offer others to justify our views would be able to motivate our advocacy were our actual (and potentially nonpublic) motivations absent. Notice that passing this counterfactual thought experiment doesn't require that we are actually motivated by adequate public reasons, nor that we offer others justifications we personally find compelling. One benefit of his approach, argues Reidy, is that it

enables citizens to engage in the often necessary strategic alliance building of real world politics, freeing them to publicly submit whichever arguments they think will promote their political aims. An additional benefit is that this approach avoids the difficulties of determining when a citizen is appropriately motivated that would accompany adoption of something akin to Audi's principle of secular motivation.

We last consider the view of Micah Scwartzman, who argues against what he calls Reidy's *principle of private sincerity*, and in favor of a *principle of sincere public justification,* or SPJ. Emphasizing the epistemic benefits of earnest deliberation, as well as the dangers of reasoning in isolation, Schwartzman argues that Reidy's counterfactual thought experiment is impossible to fully satisfy, because citizens cannot believe with confidence that the justifications they privately hold are indeed *adequate* without actually presenting them to others for evaluation. Given our limited epistemic perspective, the wide disbursement of expert knowledge, and our fallibility, we cannot sincerely believe that we would find our private justifications sufficiently motivating in the absence of our actual motivations, for before subjecting them to public scrutiny, we can't be confident of their actual adequacy. Schwartzman also disagrees with Audi's motivational requirements, and argues that so long as a citizen finds her public justifications adequate, she does no harm if simultaneously compelled to support the same policy for non-public reasons. It is enough that she publicize her reasoning and be willing to cooperatively think through policy questions with others. Schwartzman argues that when adopted by all, SPJ should significantly improve the output of the political process, leading to better decisions, and perhaps even a state better aligned with justice.

Nicholas Wolterstorff

Nicholas Wolterstorff presents both an illuminating synopsis and a scathing critique of Rawlsian public reason. He also offers perhaps the most impressive case in favor of widespread inclusion of religious reasons in the public forum. Though he greatly respects his work, Wolterstorff disagrees with Rawls on several fundamental issues. The main thrust of his complaint is that the autonomous source of reasons on which Rawls expects citizens to draw to decide matters of basic justice is woefully inadequate–even nonexistent. But even if the problem of incompleteness could be adequately addressed, he presents an alternative interpretation of liberal democracy, and consequently a competing account of the obligations of citizenship for a society of free equals. Wolterstorff views the political forum as an open marketplace of ideas, welcoming justifications grounded in a variety of sources, leaving it to the majority to decide which arguments are appropriate by show of their votes. *One person, one vote* seems the best way to respect free equals, and we needn't saddle citizens with additional unnecessary obligations so long as that democratic ideal is practiced.

In *Religion and the Public Square: The Place of Religious Convictions in Political Debate*, a book coauthored with Robert Audi and published in 1997, Wolterstorff first provides an overview of what he considers the core tenets of liberal democracy, and then unpacks and criticizes Rawls's view of public reason found in *Political Liberalism.* Rawls's article "The Idea of Public Reason Revisited" is understandably not discussed, for it was also published in 1997, but revisions made there,

including Rawls's proviso, should have no substantive impact on Wolterstorff's critique. We begin with Woltertrorff's basic understanding of liberal democracy.

> Liberal democracy is that mode of governance that grants to all people within the territory of its governance equal protection under law, that grants to its citizens equal freedom in law to live out their lives as they see fit, and that requires of the state that it be neutral as among all the religious and comprehensive perspectives represented in society… those are the core ideas. Along with them is one immensely important addition: The governance of society is ultimately vested in the normal law-abiding adult citizens of society, and at the point of ultimate vesting, each such citizen has equal voice.[123]

Further, the goal of officials and citizens alike when expressing that voice is not to promote their narrow self interests. Nor is it to promote some perfectionist virtue or account of the common good. Rather, the aim is *justice*, and this focus distinguishes Wolterstorff's view as genuinely liberal.

Wolterstorff then frames public reason by articulating the variety of positions liberals have held, focusing on the different ways in which religious reasons have been constrained – a tradition that he finds puzzling. For he considers liberals to make an unnecessary fetish of restraining "the use of religious reasons in deciding and/or debating political issues."[124] Different theorists have argued that political decisions should be

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[123] *Religion in the Public Square: The Place of Religious Convictions in Political Debate*. Rowman & Littlefield Publishers, Inc., New York, 1997: 70.
[124] Ibid 75.

exclusively based on "publicly accessible reasons," "secular reasons," and "reasons derived from the shared political culture of one's liberal democracy."[125] While some theorists exclude reasons originating from all comprehensive doctrines, others simply require that qualifying reasons be from doctrines that are "non-sectarian".[126] Further, some allow religious reasons to direct and motivate citizens' decisions, only restricting the justifications offered in public, while others mandate that judgments and motivations derive from some separate non-religious source. Additionally, while some have held that favored norms are to apply to all political decisions, others only apply them to special issues, such as constitutional essentials and basic justice in the case of Rawls, or, as we will see below, potentially liberty-constraining laws in the case of Audi. Further, some have welcomed religious reasons into the public political forum provided certain conditions are met (Rawls with his proviso, for example), while a few have excluded them altogether. And last, some even disagree over what should properly count as a religious reason in the first place.

Understanding liberal democracy as he does, Wolterstorff argues that the inclusion of religious reasons in public political debate should seem prima facie permissible—as perhaps an obvious way to treat citizens with equal respect, and honor the moral core of *one person one vote*. Restraint on such reasons seems to clearly single out and treat religious citizens unfairly.

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[125] Ibid 74.
[126] Ibid 74.

> The restraint appears, on the face of it, to violate the equal freedom component within the Idea of liberal democracy. On the face of it, the Idea of a liberal democracy implies the *absence* of any such restraint… The liberal position—restraint on religious reasons—appears to be in flagrant conflict with the Idea of liberal democracy.[127]

Thus, Wolsterstorff begins by arguing that given its foundations, the default position of liberalism should be to include religious reasoning in the public political forum.

Before offering a critique, Wolterstorff charitably lays out what he takes to be Rawls's position on public reason. He explains that the reason Rawls cites to support his favored restraints is the fact of reasonable pluralism—the social fact that under free institutions, humans will inevitably arrive at incompatible conclusions on matters of the ultimate nature of the universe, mankind's place within it, the highest human good, and so on.[128] Since there is no principled public reason to grant any particular worldview a privileged status, a pluralistic society committed to treating citizens with equal respect needs a freestanding source of reasons to decide important political matters—one that all can appreciate. Luckily, every polity will have a "shared political culture that undergirds" its practices, expressed most clearly in its institutions.[129] One job of political theorists is to examine that culture, and to illuminate the shared moral norms embedded within it. Those norms can then bring to light the implicit overarching principles of justice all

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[127] Ibid 77.
[128] Wolterstorff seems to understand reasonable pluralism as does Rawls – as an unavoidable fact, as opposed to a temporary state that will eventually be overcome.
[129] Ibid 92.

would affirm on reflection. "The independent source that Rawls proposes is that two-stage procedure, performed by our theorists, of analyzing the political culture of one's liberal democracy into its constituent ideas, and then elaborating those ideas into principles specifying the fair terms of social cooperation between citizens regarded as free and equal."[130] The output will be a "freestanding" view—not grounded in any comprehensive doctrine, but nonetheless enjoying the support of all reasonable citizens.

But still, Wolterstorff wonders aloud, in light of liberal democracy's dedication to allowing citizens to live as they wish, "how can it be compatible with liberal democracy for its citizens to be *morally restrained* from deciding and discussing political issues as they see fit?" He understands Rawls's answer to concern our status "as free and equal co-holders of political voice."[131] A person who decides serious political questions according to reasons he knows citizens potentially affected by the decision do not consider compelling commits a wrong.

> In acting thus, I am not giving your view on the matter equal weight with mine; I am not treating your voice as equal to mine. Were I to give your view equal weight with my own, I would not plunge ahead and decide and debate as I do—namely, on grounds that I know you do not accept.[132]

While Wolterstorff may somewhat sympathize with Rawls's presentation of the problem, it is Rawls's solution that he finds completely inadequate. Specifically,

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[130] Ibid 93.
[131] Ibid 94.
[132] Ibid 94.

Wolterstorff argues that the shared political culture from which citizens are expected to draw their reasons is never anything but "*more or less* liberal in its constituent ideas."[133] That is, in practice, the culture of real liberal democracies is never fully faithful to the liberal ideal. For example, Americans are divided over the issues of public school prayer and gay marriage, even though Wolterstroff believes the liberal ideal clearly supports equal freedom for homosexuals and a strong separation between church and state. He concludes that the large numbers who disagree "do not accept the Idea of liberal democracy at these points."[134] Thus, unless we share what he considers Rawls's romantically idealized view of American political culture, we are hard pressed to extract from it "principles of justice that are both *shared* and *appropriate to a liberal democracy*."[135] Rawls's hope that practicing wide reflective equilibrium will effectively order our collective political judgments and reveal his vision of liberal justice is therefore frustrated.

> I submit that only if we look at the political culture of American society through the rose-tinted glasses of the Idea of liberal democracy, viewing inconsistencies with that Idea as mere 'deviations' from the regnant 'mind,' will we fail to see that on many issues a good many Americans are firmly opposed to the Idea of

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[133] Ibid 97.
[134] Ibid 97.
[135] Ibid 97.

> liberal democracy. The Idea of liberal democracy does not capture their "considered convictions."[136]

We should therefore expect theorists attempting to articulate the principles of justice implicitly operating within our culture to arrive at conclusions wrought with the same incompatibility we see in the plurality of conflicting comprehensive doctrines. Rawls's response is that we needn't endorse his particular favored conception of justice—with his specifically favored principles—or for that matter *any* conception of justice *down to the finest detail*. We need only formulate in good faith conceptions we think other rational and reasonable persons could be expected to understand and endorse as well. The only critical mainstays beyond serious debate are the liberal principle of legitimacy and the ideal of public reason. The requirement that we appeal to our common human reason when deciding political essentials and the immediate corollaries constrain the marketplace of ideas, and within that frame the job of each—and especially of political theorists—is to articulate and defend what he or she finds the most reasonable conception of justice.

In response to Rawls's solution, which explicitly leaves so much unspecified, Wolterstorff almost seems flabbergasted.

> This is remarkable. Public reason does not have, and does not have to have, any substantive content—any positive principles of justice. The independent source does not, and need not, yield such principles… The debates that take place within

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[136] Ibid 97.

> a liberal democracy can be about everything political, except for just two things: the liberal principle of legitimacy and the idea of public reason. Those must be taken for granted.[137]

Wolterstorff employs the help of Kent Greenwalt to bolster his argument that Rawls's independent source is often indeterminate, even on matters of constitutional essentials and basic justice. Close examination of our shared political values does not point to a clear answer on the question of welfare assistance, nor on the question of the moral or citizenship status of fetuses. [138] Further, he reiterates the particular unfairness of excluding specifically religious reasons from the public forum, articulating two main complaints. First, basing important political decisions on one's religious convictions may be essential to some citizens' conceptions of the good. While Rawls would declare such a doctrine simply unreasonable, Wolterstorff emphasizes the distress incurred by actual citizens.

> It is their conviction that they ought to strive for wholeness, integrity, integration, in their lives: that they ought to allow the Word of God, the teachings of the Torah, the command and example of Jesus, or whatever, to shape their existence as a whole, including then, their social and political existence.

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[137] Ibid 101. Recall that Rawls's conception of legitimacy, while containing a procedural component, is also substantive. We learned in the first chapter that on Rawls's view, democratic outcomes, no matter their pedigree, when straying too far from justice, abdicate their claim to legitimacy. Here Wolterstorff implies that Rawls is closer to Habermas's view than he actually is. Public reason may not contain explicit predetermined principles of justice, but the liberal principle of legitimacy is articulated and the consequent norms of public reason are designed in such a way that citizens faithful to them will be lead toward acceptably reasonable and acceptably liberal conclusions.

[138] Ibid 102-104.

And in direct conflict with Rawls's prescription, settling the most important questions—matters of basic justice and constitutional essentials—is precisely when such devotees would feel *most* compelled to invoke their religion. Second, in practice under a Rawlsian ideal of public reason, nonreligious citizens will find it easier to cheat the system and decide serious political matters according to their secular comprehensive doctrines. Arguments given in utilitarian terms, for example, are more easily masked as public than 'translated' Christian arguments.[139]

Wolterstorff then pushes four lines of attack against Rawls's rationale—that those who fail to respect the norms of public reason somehow treat their fellow citizens as less than free equals. First, it seems to Wolterstorff that what is important in political decision-making is the conclusions we reach, not the reasons we use on the way to those conclusions.

> The assumption seems to be that if I use reasons you do not accept, then you are right in thinking that I am not treating you as my equal; whereas if I hold to a conclusion that you do not accept for reasons that you do accept, then you would not be right in thinking that I am not treating you as my equal. I fail to see it.[140]

Second, Wolterstorff questions the wisdom of drawing the line at constitutional essentials and matters of basic justice. "Is my moral failure perhaps the greater, the more important the issue? I fail to see that it is."[141] Third, he argues that it should not matter to a person

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[139] Ibid 105.
[140] Ibid 106.
[141] Ibid 106.

what reasons in fact move another to support a policy, so long as one finds the reasons they are offered in public appealing. Implying that he reads Rawls's view as applying to internal judgments as well as external justifications, he argues that any discrepancy between how one internally reasons and one's public justifications is understandable—even honorable—because the reason for such a move is to convince others and win support. Surely this much should be expected and accepted.

> [The reasons I submit in public as justification for a favored policy] need not even be reasons that I accept—let alone reasons that for me personally were determinative. Ad hoc reasons, tailor-made for one's addressee, seem entirely adequate. [142]

And last, fully respecting our fellow citizens may require taking their particular perspectives more seriously than does Rawls. That is, rather than fixating on their political status as a free equal, and only tending to their bracketed political selves, we should attempt to identify with their perspective as a *full* person—thoroughly shaded by their unique comprehensive doctrine—and listen empathetically to the reasons they have for and against policies from that viewpoint.

> Is there not something about the person who embraces, say, the Jewish religion, that I, a Christian, should honor? Should I not honor her not only as someone who is free and equal, but as someone who embraces the Jewish religion?... Does such

[142] Ibid 107.

> honoring not require that I invite them to tell me how politics looks from their perspective—and does it not require that I genuinely listen to what they say?[143]

Wolterstorff's critique reveals a fundamentally different understanding of liberal democracy from Rawls's—both in practice and theory—which he eventually makes explicit. At bottom, he conceives of liberal democracy as less deliberative, and more vote-centric, than does Rawls. He cites how actual citizens in practice offer different groups different justifications for favored policies for the mere purpose of garnering political support. He argues that this practice, followed by a vote, is fully acceptable to a large degree because it is unavoidable. Given what he considers a dearth of truly shared reasons on which citizens may draw, somewhat disingenuously appealing to one another's comprehensive doctrines and then accepting the outcome of a democratic vote is the best real citizens can do. Since it is the best we can do, we should invite one another to reason through political questions according to our most fundamental comprehensive dedications, be they secular or religious, and empathize with those willing to share their internal deliberations. This is the way liberal democracy is *actually* practiced, Wolterstorff argues, which liberal theorists implicitly acknowledge when prescribing the way liberal democracy *should* be practiced.

> None of our contemporary defenders of the liberal position believes that any extant society actually has such a basis… They think liberal democracies *should have* such a basis; often they speak of such societies as *needing* such a basis. Yet

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[143] Ibid 110-111.

> many of our contemporary societies manage to be ongoing constitutional democracies of a relatively liberal character. Apparently, such a basis is not necessary.[144]

Thus, if we think existing liberal democracies achieve a requisite degree of justice, respect, legitimacy, and stability, Wolterstorff concludes that arguments for a conception of public reason more demanding than his are unnecessary, which is a blessing, since many conceptions more demanding than his are also impracticable. However, some would respond that while existing liberal democracies may sustain themselves as modus vivendies and fall short of the ideal, we still have good reason to prefer a fuller overlapping consensus. For mere survival and toleration ought not be the aim of a polity, but flourishing and civic friendship, assuming these are attainable.

Returning to the problem of what he considers the liberal norm of unfairly treating religious citizens, and setting up his positive argument, Wolterstorff draws our attention to citizens whose religion requires integration of their public and nonpublic affairs. He argues that liberals seem to assume that citizens are used to bracketing their religious convictions when deciding political matters, or at least that they are easily capable of doing so in good conscience. Rawls even says that being willing to accept the demands of public reason, which presumably entails the above, is one mark of a *reasonable* citizen, and permission for adherents to do so the mark of a *reasonable*

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[144] Ibid 114.

comprehensive doctrine. But some citizens find this contrary to their fundamental identities.

> It is when we bring into the picture people for whom it is a matter of religious conviction that they ought to strive for a religiously integrated existence—then especially, though not only then, does the unfairness of the liberal position to religion come to light.[145]

Wolterstorff submits what he calls the *consocial* position to accommodate this concern, of which Belgium is an example. Consocialism differs from Rawls's view in two key respects.

> First, it repudiates the quest for an independent source and imposes no moral restraint on the use of religious reasons. And second, it interprets the neutrality requirement, that the state be neutral with respect to the religious and other comprehensive perspectives present in society, as requiring impartiality rather than separation.

The consocial position accommodates pluralism in a way that allows religious citizens to express and even act on their comprehensive commitments, which some find attractive. And it avoids the insincerity that might occur if certain citizens were publicly expected to refrain from invoking their comprehensive commitments, but nonetheless used those commitments to actually decide political issues in private. Illustrating the implications, Wolterstorff explains that the interpretation of neutrality as impartiality he has in mind

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[145] Ibid 116.

would require that the state accommodate the desire of some citizens to establish tax-funded religious schools. Taxing such citizens to pay for secular schools antithetical to their convictions without also supporting public religious schools treats them with less than equal respect.

Though the consocial position opens the flood gates to religious reasons in the public forum, as both justifiers and motivators, Wolterstorff does include three sorts of restraints. First, the *manner* in which deliberation is carried out should be respectful and satisfy the virtues of civility. These virtues "require *listening* to the other person with a willingness to learn and to let one's mind be changed. In some cases they require repentance and forgiveness."[146] Second, though laws themselves remain fair targets of debate, discussion should conform with the relevant laws of the land, including the constitution. And third, agreeing with the liberal position and rejecting the competition-of-interests approach, the goal of deliberation and voting should be justice, never the promotion of one's narrow ends.

Applied to officials, the consocial position allows judges only to consult their comprehensive doctrines insofar as doing so is necessary to interpret the community's wishes. When interpreting law, judges are charged with investigating and dutifully applying the legislators' intent. Should their personal convictions conflict with what they take to be the will of the people as conveyed through their elected representatives, judges must set their personal views aside or find another line of work. The role of the legislator,

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[146] Ibid 112-113.

Wolterstorff argues, however remains contested. Is she to deliberate and vote according to what she in good faith believes is the majority view of her constituents? Or is she to reason through questions of policy by her own lights, drawing on whatever reasons she has at her disposal—including religious reasons—and strive for justice as she sees it? Wolterstorff leaves this difficult question open. He offers only the consolation that whichever model a legislator follows, the democratic process should ensure that those who do not live up to their constituents' expectations will be promptly replaced.[147]

In light of reasonable disagreement over the nature of liberal democracy and the role of the citizen, consistent with his emphasis that any given society is only *more or less* a liberal democracy, Wolterstorff concedes that the consocial position is no more authoritative than the view of the next theorist. As is true for us all, his arguments flow from his unique moral perspective. "Even at this point of articulating the ethical component of the role of citizen, we cannot leap out of our perspectives. And even if we could, there is nothing firm that we could leap on to: no adequate independent source."[148] Thus, our conclusions should always be tempered with humility in light of the distorting influence of perspective—even when theorizing the moral/epistemic obligations of liberal democratic citizenship.

As we will see below, Wolterstorff's worries concerning the inability of public reason to provide a shared perspective robust enough to address the questions Rawls intends are shared by David Reidy. However, Wolterstorff and Reidy vary significantly

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[147] Ibid 118.
[148] Ibid 113.

in their responses. But before addressing Reidy, we turn to the work of Robert Audi, a Christian philosopher whose approach is radically different from Wolterstorff's, and one that provides penetrating insight into the moral importance of motivation.

Robert Audi

In his 2000 work, *Religious Commitment and Secular Reason*, Robert Audi poses the following question in his opening pages, and then spends the rest of the book articulating an affirmative answer.

> Is there a way to structure democracy in general, and in particular a way to shape the framework of moral principles appropriate to it, that leads to sociopolitical standards by which people of differing religious views – or none – can cooperate as citizens in an atmosphere of mutual respect?[149]

As former president of the Society of Christian Philosophers and a professor at Notre Dame, one might expect Audi to espouse a view akin to Wolterstorff's. He however submits a conception of the epistemic and moral obligations of liberal democratic citizens that takes seriously both religious and secular ethical considerations—one that severely restricts the role of religious reasons in the public forum. His inclination to pay homage to both is largely due to his confidence that a deity would empower humans with the

[149] *Religious Commitment and Secular Reason.* Cambridge University Press, New York, 2000: 4.

ability to answer ethical questions by their secular lights. Thus, while a devout Christian, Audi puts great stock in our capacity and resulting responsibility to do secular ethics. Given his tendency to allude to natural law, natural reason, and the perceived consistency between natural law and divine law, one might label his overall framework of thought as belonging to a liberal Thomistic Catholic position.

His resulting view for a pluralistic liberal democracy true to its justifying premises includes a hefty separation between church and state at the institutional level, as well as the personal level—in the judgment and decisions of individual citizens. He argues for a pool of reasons from which citizens must draw to settle certain political questions that is simultaneously more inclusionary and more exclusionary than Rawls's. It is more inclusionary in that Audi allows ultimate justifications to be grounded in comprehensive doctrines—something Rawls explicitly prohibits. However, it is more exclusionary in that as articulated, Audi's standards seem to apply to all cases of potential liberty restraint, whereas Rawls's standards only apply to constitutional essentials and matters of basic justice. Audi's standards are also more exclusionary in that reasons motivating advocacy and voting must be *secular*. This requirement runs contrary to Rawls's proviso, as well as to a reading of Rawls that emphasizes the public status of justifications, but leaves citizens' internal judgments and motivations exempt from scrutiny. For Rawls's proviso not only allows the use of nonpublic reasons to justify policies, provided that they are ultimately vindicated by public reason, but it also does not require that the public reasons one offers actually motivate. The proviso instead suggests

that what I call Public Representation is all that is necessary, and this standard mandates no link between expressed public justification and actual motivating consideration.

Audi can perhaps be best presented by first examining his understanding of the key justifying elements of constitutional liberal democracy, and then by exploring four core tenets of his view that most relevantly apply to the obligations of citizenship pertinent to public reason. The first two, the *principle of secular rationale* and the *principle of secular motivation*, flow directly from his understanding of liberal democracy. The latter two—the *standard of public comprehensibility* and *practice of theo-ethical equilibrium*—are derived from his reflections on civic virtue. Consider Audi's outline of three prominent moral defenses of liberal democracy.

> A liberal-democratic state might be held to be the only kind that preserves freedom and provides adequate scope for individual autonomy. Second, it may also be thought to be the only kind that can sustain legitimate government, which may be broadly construed as the sort of government that rational citizens are willing to consent to. And third, it may be held to contribute best – or to be essential – to human flourishing.[150]

Explicitly Kantian, communitarian, theological and contractarian arguments are also available. Pragmatic, economic and ad hoc defenses join the chorus. Some are compatible with others, some conflict, all enjoy differing degrees of success. In any case, Audi assumes liberal democracy can be defended, and doesn't scrutinize these arguments too

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[150] Ibid 83.

closely. For he argues that theorists needn't conclude with certainty that a political theory is morally viable to articulate the obligations appropriate to it. It is enough to note that liberal democracy is obviously desirable, and to recognize and maintain fidelity with its core commitments. His *fidelity to essential premises standard* states that "a liberal political theory… should incorporate in its vision of a just society enough to fulfill the theory's essential underlying ideals – and include nothing inconsistent with them."[151] The values of equality and freedom top the list. A plausible expanded list might include:

> Ideals of free democracy, in a sense implying one person, one vote; autonomy, in the sense of self-determination in a context of extensive liberty; respect for persons, implying at least equal treatment before the law and a legal system nurturing self-respect; and material well-being (including psychological well-being).[152]

Further, in line with the above, Audi argues that "freedom is the default position: any behavior that there is not a compelling case to restrict is permissible."[153] Reasons in favor of granting freedom default status can be plucked from a variety of arguments for liberal democracy.

> Freedom tends to conduce to well-being and to enable people to satisfy their desires; it is essential for recognition of people as ends in themselves, for the realization of virtue, for building a sense of community, and for the protection of

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[151] Ibid 31.
[152] Ibid 64.
[153] Ibid 27.

> religious liberty; and intuitively moral principles and their correlative rights demand it.[154]

The considerations above require that special conditions must be met during the creation of law. When citizens have their autonomy and freedom restricted for reasons they can reasonably reject, they become understandably resentful and alienated. They feel as if they are being treated with less than the respect a rational agent deserves—paternalistically.

> It is part of the underlying rationale of liberal democracy that we not have to feel this kind of resentment – that we give up autonomy only where, no matter what our specific preferences or our particular world view, we can be expected, given adequate rationality and sufficient information to see that we would have (or would at least tend to have) so acted on our own.[155]

Consequently, citizens in a pluralistic society, committed to and practicing a variety of conceptions of the good, cannot justify coercive public policies with arguments only rationally appealing to a portion of the whole. Audi argues that a liberal democracy satisfying his *fidelity to essential premises standard* must promote his *principle of secular rationale*. That standard states that citizens have "a prima facie obligation not to advocate or support any law or public policy that restricts human conduct, unless one has, and is willing to offer, adequate secular reasons for this advocacy or support (say for one's

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[154] Ibid 27.
[155] Ibid 67.

vote)."[156] (Recall that a similar "adequacy" requirement is sometimes implied by Rawls, except that for Rawls one must possess adequate *public* justification, and the relevant questions concern constitutional essentials and matters of basic justice.) Audi supplements this principle of secular rationale with several clarifications.

First, it does not rule out a role for religious reasons in the public forum, or imply that just any secular reason qualifies as adequate. We may have reason to consider religious arguments in public political deliberation of all sorts—the principle of secular rationale does not prohibit their inclusion, it only mandates that each also possess adequate secular reason to support a favored policy. (Audi's notion of adequacy is unpacked below.) Second, the principle is to reach beyond advocacy and voting, and applies but is not limited to "contributing to political campaigns, encouraging political candidates, preparing letters, pamphlets, and other written material supporting one's view, and attacking a political opponent."[157] These are all important forms of political participation which have bearing on the laws of the land. Given liberal democracy's commitment to freedom, respect and autonomy, checks on these practices are also in order. Third, the restrictions on human conduct with which Audi is primarily concerned can occur in at least two ways. *Primary* coercion "requires a particular action, such as paying tax at a certain level or submitting to inoculation."[158] *Secondary* coercion occurs one degree removed, such as direct taxation that while itself isn't objectionable, the

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[156] Ibid 86.
[157] Ibid 87.
[158] Ibid 88.

revenue it raises is used in ways found objectionable. *Secondary* coercion can also occur by triggering restrictions one *would* suffer if engaging in avoidable activities. For example, one may avoid the liberty-inhibiting process of obtaining a building permit by choosing to not build. All of these forms of coercion require special justification in secular terms.

Fourth, Audi's main concern is what he calls *positive*, rather than *negative*, restrictions. The former directly apply to citizens' activities, such as prohibitions on alcohol in public parks. The latter is a type of meta-restriction, applying to the enforcement of positive restrictions. One example might be limits on the ability of police officers to search park goers for alcohol. This particular negative restriction seems harmless enough, and might actually promote liberty, which typically needs no special justification in a free democratic society.[159] "But consider restricting government from investigating individuals even in legitimate law enforcement; [this] might engender exploitation of some individuals by others and thus produce restrictions of freedom that would be justified only if an adequate secular reason can be given for them."[160] Thus, while positive restrictions are almost always a concern for Audi, and negative restrictions are sometimes of concern, specific restrictions must be examined individually.

Fifth, while applying the principle of secular rationale beyond coercive policies and onto less intrusive state action might be laudable, Audi is reluctant to declare it mandatory.

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[159] Ibid 88.
[160] Ibid 88.

> It would be quite enough to speak adequately to those issues involving religion and politics that raise questions of substantially burdensome coercion, such as the issue of state-sponsored school prayer, as opposed to a city government's decision to give a face-lift to one old building rather than another. Still, a law is a kind of social statement, and public policy may be that and more, even apart from coercion. It is thus desirable for citizens in a liberal democracy to have adequate secular reason to support such measures, even if it may not be obligatory.[161]

Notice that Audi's position here is structurally similar to Rawls's. Rawls argues that the norms of public reason must apply to constitutional essentials and matters of basic justice, but doesn't rule out extending them further. Similarly, Audi focuses on cases of liberty restriction, but leaves open the possibility of extending his requirements into noncoercive policy decisions. Both focus their arguments on areas where they consider the stakes highest.

Sixth, Audi makes explicit exactly what he has in mind when referring to a "secular" reason.

> I am taking a secular reason as roughly one whose normative force, that is, its status as a prima facie justificatory element, does not evidentially depend on the existence of God (or on denying it) or on theological considerations, or on the pronouncements of a person or institution *qua* religious authority.[162]

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[161] Ibid 89.
[162] Ibid 89.

By articulating this pivotal concept negatively—defining "secular" in terms of what would *exclude* a candidate reason—Audi avoids perceived difficulty suffered by competing theories. For example, Audi makes clear that his *secular* reasons are not the same as Rawls's *public* reasons. On Audi's understanding, for Rawls a public reason is already widely accepted—part of the canon of public knowledge. Audi considers this a flaw. He argues that public "suggests intelligibility or even likely acceptance, on the part of the general public, perhaps even ready intelligibility or even an appropriate familiarity."[163] But Audi argues that an acceptable reason needn't be currently accepted by a majority, for they may be ill-educated or biased. I would add though that Rawls would likely respond that while many public reasons are already part of the currently accepted public canon, public reasons include all those that none may reasonably reject—those appreciable from the perspective of our shared human reason. Despite what the term "public" might imply, some may be currently absent from the explicitly endorsed pool, but that does not mean they cannot be introduced at any time. Further, for Audi, while an acceptable reason must be amenable to our common human reason, it needn't be completely untethered from a comprehensive doctrine. He only requires that rational persons be able to in time come to appreciate it as compelling or true, even if they do not currently. Of course many religious persons base a good bit of their convictions on rational grounds, but here Audi is addressing premises largely dependent upon leaps of faith.

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[163] Ibid 90.

Seventh, a reason or cluster of reasons in support of a policy must also be *adequate*. Audi means by *adequate* what others might call *sufficiently justifying*.

> The kind of justification will differ with the kind of issue, for instance political or moral, and I take it that an adequate reason provides enough justification to make it at least minimally reasonable to do (or believe) the thing in question.[164]

For example, the material threat of an epidemic would be an adequate reason to justify required inoculations. The standard is that we must give one another compelling arguments for favored policies that go deeper than surface level assertions. A citizen who vehemently asserted, '*Gay marriage is wrong, full stop*' would fall short. A satisfactorily compelling argument in secular terms as to *why* one considers gay marriage wrong must follow. However, adequate justifications needn't trace one's chain of argumentation all the way down to one's foundational assumptions. This is too high a standard, perhaps impossible for epistemologists to satisfy, let alone ordinary citizens. We are also justified in deferring to the testimony of credible experts and reliable sources, but are required to diligently check testimony for consistency. Premises supported with relevant evidence must be conjoined into sound arguments in such a way that any reasonable citizen with a decent high school education can appreciate its epistemological force. This is Audi's standard.

Eighth, while Audi's argument is mainly aimed at ordinary citizens, the obligation to have and share adequate justifications for one's favored policies in secular terms is

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[164] Ibid 90.

greater for officials, even when not acting in their official roles. This is due to their representative status and influence as role models. "Even local officials with little authority are constrained here; the judiciary, and especially the highest court, are perhaps most constrained."[165] Note that Rawls considers the Supreme Court the highest exemplar of public reason, and as we saw last chapter, he implies a similar view on the intensified obligations of public reason for officials.

Last, Audi clarifies that the principle of secular rationale is prima facie, and generates a degreed obligation depending on the severity of the potential coercion. Qualifying overriders include special cases where a citizen might be harmed were the policy they support, or their reasons for supporting it, made public. Persons living in repressive communities might also be excused. Excusing circumstances might even obtain if one sees that political opponents are not satisfying the principle of secular rationale, and one is confident "that adequate secular reason for one's vote can be found when one explores the issue further."[166] Audi also argues that were a citizen who is pacifist for religious reasons to find herself unable to articulate an adequate secular justification to support her reluctance to support a war, she would only have a prima facie obligation to refrain from voting on a referendum to go to war. The principle of secular rationale should definitely bear on her conscience.

> But *given* the importance of her religious convictions to her, and given her intellectual and psychological capacities, voting no may be, from her perspective

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[165] Ibid 92.
[166] Ibid 92.

> at least, the rational thing to do. In that case she is not "required" by any moral principle I endorse to vote yes or abstain.[167]

Audi articulates this accommodation in light of concerns that his principles will be too difficult for some religious citizens to satisfy. He argues that nothing he has promoted is psychologically impossible, or even overly difficult for most citizens. But some may feel that his standards will sometimes require them to vote and advocate contrary to their conscience. Thus, to avoid this great harm, Audi offers an escape clause, with the below caveat.

> What my view requires of conscientious citizens like her who knowingly act against the principle of secular rationale is that they be aware of what they are doing and have conscientious grounds for taking their religious commitments to be overriding or at least excusatory.[168]

In this way his requirements cannot be categorically ignored, and citizens who do sometimes diverge should remind themselves that they are failing in their obligations as citizens, which will hopefully prevent complacency. But this caveat takes much of the force out of the principle of secular rationale, which calls into question to what extent it is presented as a genuine and binding duty.

Audi next articulates and defends his *principle of secular motivation,* which is promoted as a component of civic virtue. Civic virtue concerns norms that go above and beyond what is strictly required (yet still not coercively enforceable) as a matter of moral

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[167] Ibid 95.
[168] Ibid 96.

right, and addresses a praiseworthy ideal. All other authors discussed in this chapter seem to be offering standards of unenforceable right—for minimal standards that while may not be coercively enforced, are morally binding nonetheless. That said, I will argue next chapter that Rawls himself may be interpreted as presenting both a moral minimum and a laudable ideal, captured by the so-called standards of Public Representation and Public Judgment discussed last chapter.

In building his case for secular motivation, Audi argues that the reasons that move one's voting and advocacy are essential to full civic virtue, and he draws on Kant and Aristotle to establish the moral importance of motive.

> As Kant distinguished acting merely in conformity with duty and acting *from* duty, and Aristotle distinguished – as any virtue theorist should – actions that *express* virtue from those not virtuously performed but merely "in the right state," that is, of the right type, we should distinguish actions that proceed from civic virtue and actions that are merely in conformity with it.[169]

An act of political advocacy that proceeds from civic virtue, on Audi's view, must be intellectually prompted by the right sort of reasons—reasons that are secular, as defined above, and adequate to justify potential coercion.

> [The *principle of secular motivation*] says that one has a (prima facie) obligation to abstain from advocacy or support of a law or public policy that restricts human

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[169] Ibid 104.

> conduct, unless in advocating or supporting it one is sufficiently *motivated* by (normatively) adequate secular reason.[170]

A reason for Audi is a *motivator*, roughly, if it causally explains one's actions. Motivating reasons exert positive force in an intellectual causal chain that moves from internal deliberation and reflection to external action. Audi would seem to be an internalist about reasons and motivation. That is, he appears to hold that reasons contain within them the power to compel action, as opposed to externalists who conceptually separate the emotional impetus that actually causes action in general, from the intellectual process of weighing and considering reasons that gives that impetus direction toward a particular action.

A secular motivation is *sufficient* for Audi if one sincerely believes it would by itself continue to motivate support for a given position were one's other complementary motivations absent. This means that a reason could motivate, but simultaneously fail to justify an action. It both motivates and justifies only when it is causally responsible for the action, and it is also sincerely endorsed as an adequate secular reason, in light of all other relevant secular reasons. We should make political decisions exclusively according to our better secular judgment, and set aside nonsecular considerations for political purposes. For example, a citizen considering voting in favor of a state constitutional amendment severely limiting access to abortion moved to vote yes for religious reasons, but moved to vote no for secular reasons, should vote no. Whichever direction one's

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[170] Ibid 96.

secular considerations lean, on balance, is the way one prima facie should vote, regardless of the non-secular considerations of which one may be aware.

Audi concedes that the principle of secular motivation will sometimes be difficult to satisfy, and considers two clarificatory scenarios to illustrate that point. In both scenarios a voter holds reservations against the availability of abortion for religious reasons. And in both scenarios the voter also takes seriously the genetic argument. That argument roughly states that since all the distinct genetic information necessary to form a person is present at conception, zygotes deserve a moral status similar to that enjoyed by adults, rendering abortion difficult to justify, and consequently warranting greater restrictions on its availability.[171] In the first scenario, the voter's religious convictions inflate her assessment of the persuasiveness of the genetic argument, and she realizes as much. She is consciously aware that it is her belief that God ensouls zygotes at conception that she finds truly compelling, not considerations concerning genetic uniqueness. The genetic argument is merely a secular rationalization—not the true motivator behind her support for increased abortion restrictions. In the second scenario, the voter is equally swayed by her religious convictions to inflate the persuasiveness of the genetic argument, but she is genuinely unaware of its influence. At a conscious level, she finds the genetic argument truly compelling, and adequate to justify the proposed restrictions. She believes that it is the logical force of the secular genetic argument that compels her propensity for advocacy. But in fact, were she to soberly investigate the

[171] John Noonan is famous for making such an argument.

issue free from non-secular influences, she would clearly conclude that the genetic argument is not powerful enough to override the secular reasons in favor of the status quo. She would conclude that the reasons on balance do not adequately justify the proposed restrictions.[172] Audi doesn't provide much guidance as to how this unconscious rationalization can be avoided, but we might plausibly draw on the work of Micah Schwartzman, covered later in this chapter, to argue for a corollary obligation of citizens to reflect on their internal deliberation and diligently attempt to root out the unconscious impact of nonsecular considerations when we have reason to suspect their influence.

However, Audi directly addresses citizens who knowingly possess only religious motivations for or against a given policy that would potentially restrict other citizens' liberty. He hopes that they will find his secular arguments grounded in fidelity to the justifying principles of liberal democracy compelling. But he also briefly appeals to the Golden Rule as a reason to adopt his principle of secular motivation.

> Adherence to that very principle, however – even if the adherence itself is partly religious, as it may be owing to, say, acceptance of the do-unto-others rule – may lead me to seek an adequate secular reason that motivates me in the same direction.[173]

Thus, citizens who consciously lack secular reasons aligning with their nonsecular considerations at the very least have an obligation to seek and find an adequate secular rationale. When such a rationale also becomes a motivator, such a citizen does no wrong.

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[172] Ibid 97.
[173] Ibid 98.

That is, one can be motivated by religious reasons—the Golden Rule, in this case—to find a secular justification powerful enough to serve as one's motivation for advocacy and voting. Indeed, this passage implies that citizens are free to single-mindedly seek secular justifications that are to become motivators that align with their religious convictions, and do not have a duty to evenhandedly assess a reasonable amount of relevant information from all angles. Audi goes on to say, "If I find [such an aligned secular justification that becomes a motivator], the fact that my search for it was in part religiously motivated does nothing to prevent my now satisfying the principle [of secular motivation]."[174]

To the charge that his principle of secular motivation unfairly burdens religious citizens, Audi replies that it not only precludes religious domination of democratic politics, but also certain sorts of zealous anti-religious domination as well. Were a citizen to advocate the exclusion of creationist arguments from the public school curriculum, they might satisfy the principle of secular rationale were they to hold and be prepared to offer an adequate secular justification. But were their motivations irrationally anti-religious, Audi would consider them delinquent. Some anti-religious reasons, then, Audi does not count as secular.

> Not just any anti-religious motivation would fail to count as secular, e.g. where the desire is simply to weaken a religious group enough to prevent its dominating a society. But for purposes of taking the motivation principle to be an element of

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[174] Ibid 98.

civic virtue, it is reasonable to construe a desire to destroy a religion or discredit its deity as non-secular.[175]

Given his negative conception of a secular reason—one not based on theistic assumptions, depending on the existence or nonexistence of a deity, or on religious authority—this seems odd. One could conceivably be motivated to "destroy a religion or discredit its deity" for reasons that avoid all three of these conditions. Consider for example a given religion that requires its followers to practice violence and intolerance. If the faithful have proven themselves staunchly uncivil, others might consider it preferable to undermine their religious convictions by discrediting their god as opposed to imprisoning them. Such motivations seem consistent with Audi's explicit definition of a secular reason, but here he says they would not qualify.

Perhaps we should understand Audi's emphasis to be on the *inadequacy* of an emotionally-driven, irrational, spiteful desire to see a religion destroyed that lacked such background considerations. A proponent compelled by such considerations would lack "a set of secular reasons that is both evidentially adequate and motivationally sufficient."[176] But to be clear, Audi does not consider religious belief necessarily irrational (in the sense of non truth-oriented) or requiring a leap of faith. Indeed, he holds that a person could be convinced of the cogency of secular arguments for the existence of God, and even that such a person could believe that the arguments "should be compelling to any rational person who properly considers the premises in the light of the data, yet still consider the

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[175] Ibid n18, 234.
[176] Ibid 98.

principles of secular rationale and motivation to be sound commitments in political philosophy."[177] Or perhaps Audi believes that a desire to severely undermine a religion would treat followers with less respect than they deserve, and count as an inadequate motivator for that reason. Given this apparent inconsistency, perhaps it is best simply to note that Audi considers it impermissible to directly challenge the truth of a given religion.

In defending his principle of secular motivation, Audi directly addresses a division of intellectual labor relevant to the *justification versus motivation* question. One might argue that were a person to possess and be ready to deliver an adequate secular justification for a favored liberty-constraining policy, it would do no harm for them to be internally motivated by some set of non-secular considerations. If engaged in public deliberation, such a person might simply offer a number of considerations—some of which they find compelling, and some of which they do not—and leave it to his fellow interlocutors to draw their own conclusions concerning their viability and force.

> We can say, as a paid advocate might, something like, "Here are the arguments," but if we do this in a way that distances us enough from the reasons to rebut the presumption that they are motivating for us, there is a sense in which we conceal from others in the discussion or debate *who* we are. There is a place for such

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[177] Ibid 103.

> concealment, for instance in criminal trials, but it should be generally avoided in policy discussions in a liberal democracy.[178]

The idea seems to be that speaking one way and thinking another, or offering others reasons oneself does not find compelling, somehow commits a degree of disrespect. Again drawing on the do-unto-others rule, which can be both religiously and secularly endorsed, "one would not like having a different religious group, with which one deeply disagrees, press for its religiously preferred policies solely for religious reasons of its own, even if a good secular reason could be offered for those policies."[179] Audi argues that the impermissibility of such tactics is implicit in the very conception of constitutional liberal democracy, and of the view of citizens as dignified free equals.

> My claim is that a substantially weaker separation of church and state than I have defended is not fully consonant with the ideals of liberal democracy; and I think that sound ethics itself dictates that, out of respect for others as free individuals with human dignity, we should always have and be sufficiently motivated by adequate secular reason for our positions on those matters of law or public policy in which our decisions will (or might reasonably be expected to) significantly restrict human freedom.[180]

Thus, as would be agreed to by Kant and Aristotle, it is not only morally important that citizens vote the right way, but that they vote for the right reasons. As much is necessary

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[178] Ibid 99.
[179] Ibid 99.
[180] Ibid 115.

to adequately promote virtue—in Audi's case, *political* virtue. Audi concedes to the religious citizen that his principles require "partial secularization of our advocacy, argumentation, and decisions."[181]

> But they do not restrict our ultimate freedom of expression, and they leave us at liberty to fulfill our cherished religious ideals in all the ways compatible with a system in which those with differing ideals are equally free to pursue theirs."[182]

Exclusively considering secular reasons when deciding potentially liberty constraining public policy is necessary to make compatible respect for the religious freedom of one with respect for the religious freedom of all.

Though both are central to his theory, Audi clearly considers the principle of secular motivation less binding than the principle of secular rationale, and as a matter of virtue as opposed to a matter of right. He submits the principle of secular rationale as the base minimum requirement of liberal democratic citizenship concerning political decision-making—explicitly as a "(minimum) *justification principle.*"[183] The principle of secular motivation, on the other hand, is a matter of virtue—morally important, but inessential for citizens to show one another adequate respect—explicitly a "*virtue principle*."[184] However, Audi explains that this shouldn't imply that being moved by proper motivations is supererogatory in the same sense as is extravagant charity. Failing to do the latter doesn't warrant criticism or indicate a character flaw. But even if states

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[181] Ibid 115.
[182] Ibid 115.
[183] Ibid 104.
[184] Ibid 104.

may be *justified* in enacting laws created by citizens and officials who fail to satisfy the principle of secular motivation, the agents involved are surely liable to criticism, and we should not consider their actions admirable. Citizens may well be within their moral *rights* to advocate and vote without satisfying the principle of secular motivation. But such a practice is morally defective. Audi argues that "conscientious citizens – whether religious or not – should prima facie resist supporting coercive laws or policies even where they feel confident that they have an adequate rationale" if they lack a corresponding adequate secular motivation.[185] While operating within our legal rights alone is permissible, doing so fails to live up to an attainable standard of excellence as liberal citizen, and is therefore shameful on Audi's account.

Audi promotes the principles of secular rationale and secular motivation as logical extensions of the justifying premises undergirding liberal democracy. However, in the third section of *Religious Commitment and Secular Reason*, he attempts to derive similar conclusions by reflecting more deeply on the demands of civic virtue for liberal democratic citizens. It is unclear to what extent this second approach is genuinely distinct from his first. But in any case, he argues that this virtue-theoretic angle is fruitful insofar as we find the character-centricity of virtue ethics compelling and illuminating.

In this frame, Audi argues in favor of a *standard of public comprehensibility*. Similar to the demands of Rawlsian public reason, justifications offered for favored and potentially coercive policies are to be articulated in terms others can understand and

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[185] Ibid 104.

appreciate. "This rules out relying wholly on technical language as well as appealing only to esoteric terms drawn from a subculture or intelligible only within a certain religious community."[186] Following this standard is essential to generic stability. And while it might also be essential to Rawls's morally laden stability *for the right reasons*, here Audi only makes a case for its practical necessity. Were losers in a vote unable to appreciate the reasons motivating the winning majority, alienation and social strife would be the result, especially when the adopted policy led to constraints on their liberty. Also, while a citizen may be able to articulate a religious experience in a way that makes it understandable, and in that sense *comprehensible*, to others, such private experiences cannot be expected to serve as proper *reasons* for others. Thus, comprehensibility as used here by Audi implies more than bare communicability—it implies something like *appreciability* or perhaps *empathability*.

> The comprehensibility of a reason is not merely a matter of the intelligibility of the language in which it is expressed but also of its force as a reason. If it cannot be seen to have any force given the powers of an adequately informed rational citizen, if, for instance, it cannot be so understood apart from initiation into a subculture, it is not publicly comprehensible in the relevant sense. [187]

Reflection from this perspective also supports some version of the principle of secular motivation. Adhering to the standard of public comprehensibility only partially satisfies the ideal, for the reasons that move our actions are incredibly relevant to civic

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[186] Ibid 157.
[187] Ibid 158.

virtue. "Insofar as conduct is action *from virtue*, it matters greatly how it is grounded in the agent's character."[188] Publicly offering nonmotivating justifications that are comprehensible, but actually being moved to advocacy for reasons inaccessible to ideological outsiders disrespects the parties coerced by the policy. Such behavior erodes civic friendship and creates an atmosphere of distrust. "The woman prevented from having an abortion, and the patient denied medical assistance in suicide, will tend to resent the preventive legislation as religiously motivated even if the secular arguments offered to support it seem plausible."[189] Of course, how particular norms of public reason will impact social harmony is a matter of speculation. But Audi makes a plausible case that some will resent having their liberty constrained and their needs unmet due to others' religious motivations. Therefore he reiterates the necessity of thoroughgoing secularity in our political decisions when they would potentially lead to liberty-constraining policies.

> The central idea is that citizens in a free and democratic society are obligated, by their commitment to freedom and democracy and (I believe) morally as well, not to make decisions, as citizens, in support of laws or policies that restrict the scope, or even the de facto exercise, of liberty, unless they have a sufficient secular basis for so deciding.[190]

Especially beneficial for our purposes, Audi again clarifies the differences between his view and Rawls's. He explicitly distinguishes his 'public comprehensibility'

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[188] Ibid 165.
[189] Ibid 165.
[190] Ibid 279.

requirement from Rawls's insistence that justifying reasons and values be drawn from the public political culture, and never tied to any particular comprehensive doctrine. To the contrary, Audi argues that often there's no harm in invoking key elements of a comprehensive doctrine, so long as the reasons are comprehensible in the relevant sort of way. If citizens can be reasonably expected to understand and come to appreciate it, the simple fact that a reason is part of a comprehensive view isn't by itself cause to exclude it. Were "comprehensive" to only apply to religious doctrines or worldviews based on faith as opposed to reason, Audi might agree with Rawls.

> For [Rawls] has in mind outlooks on the world, particularly religious ones, that are not compelling to rational persons in general and among which a liberal democracy should be neutral. But if comprehensiveness is understood non-technically and is a matter of scope, then we surely cannot say a priori that there is no comprehensive view – at least in a limited domain, such as the moral or sociopolitical – from which one may, even apart from Rawls's restriction, draw reasons or principles appropriate for public justification of laws and public policy.[191]

Of course, Rawls holds that many public reasons overlap within comprehensive doctrines—this enables the overlapping consensus that facilitates public reasoning and legitimacy. But Rawls requires that we develop a narrow political conception of justice to use to use for deciding political questions, for this avoids inevitable and unnecessary

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[191] *Religious Commitment and Secular Reason.* Cambridge University Press, New York, 2000: 159.

disagreement over superfluous matters that would occur were citizens to draw on complete comprehensive doctrines, wide in scope.

Audi also opposes the *proviso* of Rawls's wide view, for three explicit reasons. Recall that the proviso, introduced in *The Idea of Public Reason Revisited*, stipulates that:

> [R]easonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.[192]

First, Audi takes issue because as it stands, "reasonable" and "in due course" are inadequately specified. This is something Rawls acknowledges. He insists that the proviso must only be invoked in good faith, and that the finer details are to be worked out in practice—that they "cannot feasibly be governed by a clear family of rules given in advance."[193] Audi accepts this, but highlights the importance of determining whether those who introduce nonpublic arguments must have in mind a rough idea *when* public justifications will become available. "It is one thing to have warrant for believing that there is good public reason available now, say through a combination of obtaining further (accessible) facts and reasoning carefully enough about them; it is quite another to have warrant for believing that there *will* be adequate public reason at some appropriate point

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[192] *LP* (IPRR) 152.
[193] Ibid 153.

in the future."[194] Second, "in due course" also too widely opens the door for religious domination of democratic politics. It is often much more difficult to repeal a law once it has taken effect than to not adopt it in the first place, "particularly if it strengthens the domination of its supporters."[195] And third, Audi finds Rawls's proviso too fixated on the reasons citizens publicly offer, and not concerned enough with the reasons they internally consider compelling. Thus, he reads Rawls as neglecting the moral importance of judgment and motive.[196]

We should last consider Audi's suggestions for religious citizens struggling to rectify their secular and religious obligations. In a section entitled "The Integration of the Theological with the Ethical," he argues that religious citizens should strive to bring into alignment their religious convictions with their secular moral judgments in a way reminiscent of Rawlsian reflective equilibrium. They are to use their considered secular moral judgments to check convictions informed by religious processes, and vice versa. This process is required in light of the force of both forms of moral reasoning, and reasonable citizens shouldn't find the process overly burdensome.

> Thus, a seemingly sound moral conclusion that goes against one's scriptures or one's well-established religious tradition should be scrutinized for error; a religious demand that appears to abridge moral rights should be studied for such mistakes as misinterpretation of what it requires, errors in a translation of some

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[194] *Religious Commitment and Secular Reason* 160.
[195] Ibid 160.
[196] Ibid 160.

> supporting text, and distortion of a religious experience apparently revealing the demand; a major moral principle derived from only one of the five sources of religious obligation should, in many cases, be tested against one or more of the other four and perhaps also against some secular source.[197]

Rather than requiring or leading to separate psychological selves within one citizen, Audi believes such a practice should lead to a beneficial integration simultaneously satisfying both secular and religious obligations. His hope here seems similar to but not identical with Rawls's confidence that citizens living under just institutions will over time voluntarily bend their comprehensive doctrines in line with justice. Audi's perspective differs in that on his account, the interplay between secular reason and religious understanding is more balanced – both sides carry roughly equal weight. Whereas for Rawls the public perspective determines what is reasonable, to which our nonpublic commitments must ultimately defer, or at least accommodate, at least for political purposes.

Audi also argues that religious citizens can practice this process without worrying they are somehow failing in their religious obligations because we should expect God's will to be revealed in a variety of ways. If we have reason to think that God intentionally endowed humans with reason, we can conclude that we may be expected to think through ethical questions from a secular perspective, especially since we can't be sure that scripture hasn't suffered mistranslation or cultural distortion. God might very well desire

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[197] Ibid 130.

citizens to develop their secular moral faculties and use them as a check against religious demagoguery or even honest mistake. Thus, religious citizens needn't exclusively defer to their holy texts or institutions for moral guidance—clear secular reason may be not only religiously permissible, but religiously required. "A significant degree of autonomy of reason in governing human life is presupposed in any religious perspective. Extending a good measure of that autonomy to the ethical and religious domains seems in any case to be quite consonant with piety."[198] Where convergence occurs religious citizens can be more confident in their moral convictions. But when perspectives conflict, Audi argues that believers have good reason to reevaluate, and to abstain from supporting a liberty-constraining policy when it cannot be vindicated by their secular ethical lights.

When the two conflict, how is the principle of theo-ethical equilibrium to be reconciled with the principle of secular rationale? Audi argues that little guidance can be given a priori. He says that a citizen presented with conflicting judgments between his exclusively secular and his theo-ethical perspective should reevaluate the latter, but that such a citizen is well within his or her moral rights to vote according to whichever seems most compelling. Audi perhaps hopes that secular and religious reasoning will converge on roughly the same conclusion most of the time, especially if we consider use of our secular reason divinely endorsed. When viewed as such, we are perhaps more likely to find a way to rationalize scripture that dramatically conflicts with our better secular judgment—as nonliteral, mistranslated, skewed by its author, etc. But when conflict is

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[198] Ibid 133.

entrenched, Audi argues that a citizen who sides with her religious perspective may be criticized by others as deficient in civic virtue, but may view herself as "reasonable, or at least excusable."[199]

> Given the conception of God as omniscient, omnipotent, and omnibenevolent, the possibility of theo-ethical equilibrium is to be expected; and a mature, conscientious theist who cannot reach it should be reluctant or unwilling to support coercive laws or public policies on a religious basis that cannot be brought into that equilibrium.[200]

David Reidy

In his 2000 article, "Rawls's Wide View of Public Reason: Not Wide Enough," David Reidy articulates an objection to Rawls's idea of public reason similar to one promoted by Wolterstorff. He argues that given Rawls's constraints, the content of public reason may not be rich enough to enable collective autonomy, threatening the possibility of legitimacy as conceived by Rawls. Reidy begins by recounting the reasons behind and the content of public reason. A polity of free equals must justify serious political

[199] Ibid 137.
[200] Ibid 130.

decisions to one another if they are to achieve the mutual respect necessary to make legal coercion legitimate. Justifying these decisions in light of the fact of reasonable pluralism requires using modes of reasoning none can reasonably reject, and drawing from a pool of shared reasons and values. A citizen may thus appeal to the "noncontroversial truths of science, mathematics, history and common sense, and a political conception she is prepared in good faith publicly to defend before others in terms of values and beliefs she may reasonably expect others to endorse from within a common human reason."[201]

Reidy argues that while the set of public reasons may sometimes prove rich and wide enough to answer questions concerning constitutional essentials and basic justice, the assistance of nonpublic reasons will be required in at least two instances—when citizens and officials a) order political values and b) when they attempt to settle important background issues surrounding many fundamental political questions.

For example, while a citizen may endorse the public political values of liberty and equality, deciding which should take precedence in hard cases requires appeal to more

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[201] "Rawls's Wide View of Public Reason: Not Wide Enough." Res Publica 6: 49-72, 2000. Notice that this passage suggests a "could reasonably affirm" interpretation of what qualifies a reason as public. Elsewhere Reidy implies a "none could reasonably reject" standard, which I take to be the correct view, since persons could reasonably affirm any number of reasons typically considered nonpublic. For example, reasons embedded within and relying on the broader commitments of Islam. A person could certainly reasonably affirm this doctrine, and the reasons within it. And since religious reasons are the quintessential example of nonpublic reasons, this standard can't be correct. The key is that some could also reasonably *reject* Islam. All non-Muslims are not necessarily unwilling to or unable to consider and weigh relevant evidence. The fact that Muslims and non-Muslims conclude differently may simply be due to the burdens of judgment. Thus, public reasons are those that none could reasonably reject, which means they are also those accessible from the perspective of our common human reason. Further, to be clear, the above conflation certainly isn't unique to Reidy, who actually became conscious of and corrected this inconsistency in later work. Wolterstorff would sometimes seem to make a similar error, and so too would Schwartzman. I mention it here simply for the sake of clarity.

foundational values—perhaps to values beyond the content of public reason articulated above. One could of course flip a coin to randomly choose between liberty and equality. And this would solve the practical matter, and at least allow one to reach a decision. But Reidy's argument isn't addressed at the epistemic limits of public reason, at least not for their own sake. Instead, Reidy's argument engages the moral impetus behind public reason, one that requires citizens to arrive at collective decisions on principled grounds that are justifiable to one another. While flipping a coin might overcome the stalemate, it would not do so for good rational reason, and would therefore fail to support the legitimacy of consequent policy. Reidy argues that when such impasses occur, our comprehensive doctrines, which are of course nonpublic, may sometimes be the only source of rational appeal.

Further, questions concerning matters of basic justice often can't be answered without first addressing more basic questions. For example, the moral, legal and citizenship status of higher apes and fetuses may need to be decided before addressing whether apes and fetuses deserve legal protections, and if so, what sort. This would seem to require going beyond commonly shared assumptions and into controversial, comprehensively grounded territory. Also, the nature of property rights—whether considered pre-political, always the result of positive law, or some necessary mix—may need to be decided before determining the justness of particular environmental laws.

> For example, whether a governmental "taking" occurs when environmental laws significantly limit the uses to which private property may be put depends crucially on whether property rights are conceived of as political embodiments of pre-

> political natural rights or as purely political artifacts. But this depends in turn on how the relationship between humans and the natural world is conceived in broadly moral terms.[202]

And these broadly moral terms, and the conceptions in which they are couched, reach beyond the realm of publicly shared reasons, and into nonpublic reason.

While Rawls holds that public reason can answer the above unaided, Reidy makes a strong case that public reason may be less autonomous than Rawls assumes. If public reason cannot answer all or even perhaps most questions of constitutional design and basic justice without the help of nonpublic reasons, this incompleteness jeopardizes the ability of a polity to satisfy the liberal principle of legitimacy. Recall that the liberal principle of legitimacy states that "the exercise of political power is fully proper only when exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason."[203] If the set of "principles and ideals acceptable to their common human reason" is not robust enough to decide constitutional essentials without the direct help of nonpublic reasons, Reidy argues that the entire Rawlsian project is at risk. He presses his case, writing, "Rawls's view too often demands the impossible of citizens and officials, yet there is no obvious way to adopt a view wider

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[202] Ibid 69.
[203] *PL* 137.

than Rawls's without revising or abandoning his understanding of political autonomy and liberal legitimacy."[204]

This is a troubling concern that threatens to seriously undermine Rawlsian Liberalism. However, for the purposes of this project I bracket this particular worry, and assume that others have successfully responded.[205] Reidy's concern is relevant to this project, but in any philosophical endeavor certain issues must be cordoned off for the sake of focusing and making progress elsewhere. Assuming the Rawlsian project can be salvaged, much of Reidy's article remains relevant for my purposes here. Specifically, in his section, *Sincerity, Motivation and the Ideal of Public Reason*, he argues that Rawls must have had sincerity and motivational requirements in mind for his idea of public reason because he explicitly mandated that it regulate decisions in the voting booth, and that citizens argue and vote in good faith.[206]

> [Rawls's ideal of public reason] governs not just how citizens and officials address one another, but also how they exercise political power over one another as free and equal members of a single body politic. The ideal of public reason leaves no room for political hypocrisy.[207]

However, while it is clear that motivation and sincerity are integral to his ideal of public reason, Rawls leaves their roles woefully underdeveloped.

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[204] "Rawls's Wide View of Public Reason: Not Wide Enough" 72.
[205] See Andrew Williams's "The Alleged Incompleteness of Public Reason." Res Publica. 2000, issue 6, pages 199-211. Also, Micah Schwartzman's "The Completeness of Public Reason," Politics, Philosophy & Economics. 2004, issue 3, pages 191-220.
[206] Ibid 57.
[207] Ibid 57.

Reidy argues that the most plausible way to rectify this gap involves a standard that satisfies sincerity and motivational requirements simultaneously, mandating a counterfactual thought experiment. Citizens are to be able to imagine themselves motivated by exclusively public reasons to support favored policies in the absence of reasons grounded in comprehensive doctrines.[208] But they needn't share these public reasons with others. He endorses what, as we shall see below, Micah Schwartzman calls a *principle of private sincerity*. In their own minds, citizens must hold justifications for the policies they publicly advocate that they sincerely judge sufficient.[209] Similar, but certainly not identical, to Wolterstorff's position on this particular point, citizens are however free to share with others whatever reasons they consider might best promote their political interests.

> They may advocate or defend their position or vote in terms of public reasons which they themselves find inadequate or weak but which they expect others to endorse, provided they sincerely believe their position or vote justified by some (other) public reason(s) which they have in fact identified. Further, they need never actually be motivated to act by anything other than non-public reasons.[210]

Reidy argues that this standard is appropriate because a) it is stringent enough to remain faithful to the moral core of the liberal principle of legitimacy, and b) it is lax enough to

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[208] Ibid 61.
[209] On page 54 Reidy argues that "citizens and officials must each vote according to their best judgment within public reason alone," but on page 62 the standard is "public reasons they judge good and sufficient." Both "good and sufficient" and "best" are used in the full paragraph on page 59. I (perhaps mistakenly) assume Reidy intends to endorse the weaker standard. In any case, there is an important distinction to be made between the two, and I aim to avoid similar confusion next chapter.
[210] Ibid 58.

facilitate citizens' desire to engage in strategic alliance-building and political persuasion. As explicitly stated by Rawls, the liberal principle of legitimacy only mandates adequate public justifications, and does not directly address internal motivations. And in light of actual political practices, it is perhaps pejoratively utopian to expect citizens to dutifully reveal their true motivations and not engage in strategic maneuvering.

> Within a liberal democracy citizens and officials must recognize the inevitability of reasonable disagreement over the weight and force of public reasons and the consequent inevitability of strategic, consensus-building conduct in public political life… Citizens must expect that in public political activity their fellow citizens may sometimes argue from or appeal to public reasons which they do not themselves affirm as the best—or even very good—public reasons for the positions they are advancing. [211]

Given the stakes often involved and the consequent overwhelming temptation to promote one's favored policies, it is the responsibility of each to judge the limits of the reasons they are offered. So long as everyone votes for policies they sincerely find sufficiently justified by public reason, even if they personally do not consider the justifications they offer others fully convincing, no foul is committed, and legitimacy is maintained.

Before concluding the section, Reidy distinguishes between three different ways a motivational requirement could play out for the sake of clarity. A strong standard might require that the public reasons that a person offers others be the same that motivate their

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[211] Ibid 60.

view. A less stringent standard might require that they be motivated by public reasons, but not require that those particular public reasons be offered others. And "the weakest would demand only that they be able genuinely to imagine themselves being motivated by specific public reason(s) to which they can point when taking or voting for particular positions on fundamental political issues."[212] Reidy argues that since neither autonomy nor legitimacy require anything more than this weakest option, the risk that a more stringent requirement might lead to destabilization by putting "the actual motives of citizens and officials on trial" is reason to prefer it, especially when such a trail would lack direct or decisive evidence, and no other reasons to prefer a more stringent requirement are immediately available.[213] As we will see below, while he is not overly concerned with motivation, Micah Schartzman is concerned with publicity, and consequently rejects Reidy's standard of private sincerity as seriously undermining the epistemic benefits of deliberation, and in that way suboptimizing the justice of political decisions.

Micah Schwartzman

In an article published in January 2010, "The Sincerity of Public Reason," University of Virginia School of Law professor Micah Schwartzman argues in favor of a

[212] Ibid 61.
[213] Ibid 62.

vision of public reason that focuses mainly on the epistemic benefits of sincere, open deliberation. He argues for a principle of sincere public justification largely based on his confidence that in practice it will greatly improve the quality of deliberation and thus the output of the political process. However, I take Schwartzman's largely epistemic argument to link back up with the moral dimensions of public reason in that as political outputs improve epistemically, they become more reasonable, and thus more just. And when citizens realize that this is the case and voluntarily adopt Schwartzman's standards, respect is also bolstered, and along with respect, legitimacy. Consequently, if Schwartzman's argument is successful, sincerity and publicity will be of key importance next chapter when comparing versions of PR with versions of PJ. But before considering his positive case, given that sincerity is integral to his view, Schwartzman first addresses the concern that sincerity may actually be unattainable.

Schwartzman begins by making explicit that though the view has been challenged by Gerald Gaus and others, he is in agreement with Rawls on the content of public reason. Public justifications must be "based on reasons drawn from a family of shared moral and political values, along with standards of evidence and methods of reasoning, which free and equal citizens could reasonably accept."[214] He adds, however, that public justifications must also be *expressed* publicly—that is, communicated to others in the public forum. This second component is not universally endorsed, and while Rawls says

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[214] "The Sincerity of Public Reason." The University of Virginia School of Law Public Law and Legal Theory Research Paper Series 2010, no. 003 (2010): 5. <http://ssrn.com/abstract=1532779> Accessed 4/15/10.

that deliberation is beneficial, we might interpret him as not making it an explicit requirement of public reason. That is, on one interpretation of Rawls's view, a citizen or official could presumably satisfy the requirements of public reason without externally deliberating.

Before articulating a full defense, Schwartzman considers three standards for his public justification requirement—available, hypothetical, and actual—each emphasizing different moral and political values. Making justifications *available* for those with the inclination to seek them out would promote government transparency, and consequently accountability. *Hypothetical* public justifications—those that we in good faith believe would be deemed sufficient by other reasonable persons—would promote mutual respect, since offering justifications to others that we ourselves do not find convincing disregards their rational capacities. And *actual* public justification—Schwartzmans's favored standard—promotes "the good of mutual assurance and fair social cooperation."[215]

Schwartzman favors actual publicity for a number of reasons. Beyond its ability to encourage stability through mutual assurance, it makes political decision-making even more transparent than merely *available* public justifications. But his main reason for preferring actual public justification concerns its epistemic benefits. He argues that 1) deliberation obviously requires that justifications be made public, 2) "public deliberation improves the quality of political argument," and 3) "all else equal, having stronger justifications increases the likelihood that citizens and officials will make better

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[215] Ibid 6.

decisions."[216] He admits that the second step is the most controversial, but draws on the recent work of deliberative democrats to buttress its credibility.

Public deliberation improves political argument in at least three ways. First, it encourages the sharing of information among experts and laypersons. Since no person has the time or resources to become an expert on every matter, the information relevant to a particular political issue will likely be fragmented into several different persons' minds. Some will know very little about a given issue. Private deliberation is therefore less fruitful than it could be. However, when citizens and officials *publicly* justify their positions, information that was once privy only to select experts becomes accessible to all. Since one cannot make a good decision without information relevant to an issue, public justifications clearly improve political decisions in this respect. "Thus, one of the main purposes of political discussion is to ameliorate [what Alvin Goldman calls] the 'epistemological division of labor' that characterizes complex societies."[217]

Second, public justification and deliberation plausibly improves the quality of inferences. One philosopher reasoning in isolation sometimes makes great strides, but it is through publishing, attending conferences, conversing with other experts and reflecting on the objections and suggestions of our colleagues that we usually make dramatic philosophical progress. Similarly, citizens and officials who share their justifications with others who then subject them to friendly scrutiny are more likely to identify reasoning missteps and correct omissions than those reasoning alone. Whether one is pondering a

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[216] Ibid 8.
[217] Ibid 8.

reply to the problem of evil, or attempting to sort out the proper status of illegal/undocumented immigrants, we are usually less likely to make logical missteps when engaged in open critical deliberation with others.

And third, while deliberation is not a guarantee that the correct decision will be reached, it is at least a strong guarantor against blatantly poor decisions.

> The modest conclusion to draw from these arguments is that citizens can be confident that they have made reasoned and informed decisions only if they have had the opportunity to consider and challenge those arguments presented as justifications for their decisions. To determine whether their reasons are public, in the sense of being justifiable to others as free and equals, citizens must subject them to actual publicity.[218]

Thus, given the benefits of publicity and the dangers of privacy, Schwartzman argues that a publicity requirement should be introduced as a corollary to Rawls's ideal of public reason.

Since it would undercut his entire project, Schwartzman directly address the charge of Stuart Hampshire that sincerity is practically impossible, since it requires single-mindedness. That is, Hampshire argues that for a statement to be sincere, its author must be free from any unconscious doubts or unknown influences on that belief, and must be certain that neither is at play. As complex psychological beings, humans of course can seldom, if ever, satisfy this standard, which makes sincerity ever elusive. But

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[218] Ibid 8.

Schwartzman replies that Hampshire "ignores the moral relevance of our intentions."[219] "The truth in Hampshire's account is that, at least in some circumstances, people have a responsibility to reflect on their beliefs and emotions."[220] Some amount of reasonable effort should be spent attempting to discern to what extent and for what reasons particular propositions are believed. But the fact that we cannot be fully certain that our conscious beliefs aren't haunted by unconscious doubts doesn't negate the moral importance of correspondence between what we consciously believe and what we communicate to others. Indeed, Schwartzman rightfully concludes that given that reasonable people will disagree over which conception of sincerity is best, it makes sense to adopt a minimalist correspondence conception, "at least for the purpose of describing sincere justification in the political domain."[221]

After mitigating Hampshire's critique, Schwartzman submits the linchpin of his theory, the *principle of sincere public justification*, or SPJ. That principle states that:

> *A* ought to advocate proposal *p* if, and only if, *A* (i) believes that ($R1 \rightarrow p$), and (ii) publicly asserts *R1* to justify *p*.[222]

That is, to satisfy SPJ, an agent must believe that the reasons he or she publicizes in defense of a favored policy are indeed sufficient to justify that given policy. Drawing on the work of Gerald Gaus, Schwartzman argues that in light of our finite resources, that we sincerely believe our justifications are *sufficient* is the correct standard—mandating

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[219] Ibid 10.
[220] Ibid 10.
[221] Ibid 11.
[222] Ibid 11.

that they be *best* or *most justified* is simply too much to ask. Since we lack the time, energy and access to information necessary to *exhaustively* investigate important political questions, settling on policy solutions that seem good enough is all we can reasonably demand. Presumably what counts as reasonable investigative effort would increase for officials, but Schwartzman doesn't address this explicitly.

Schwartzman then defends SPJ in two steps. First, rejecting convergence views of public reason, whereby citizens and officials satisfy the ideal of public reason simply by converging on the same policy, he reiterates the requirement that justifications be grounded in public reasons, and draws on Rawls's duty of civility to establish that the reasons offered must be sincerely believed sufficient. "They cannot rely for the purposes of political justifications on reasons they find implausible or inadequate, even though others might be persuaded to accept those reasons." Doing so would "demonstrate a lack of respect for the reasonableness of their fellow citizens."[223]

Second, Schwartzman recounts the epistemic benefits of deliberation, arguing that those who do not publicly disclose their justifications cannot be confident that they are indeed adequate. "Without public sincerity purported justifications are insulated from the deliberative process, and so immune to the epistemic benefits and protections it provides."[224] Publicizing one's justification helps to satisfy the concerns of respect above, since it bolsters the likelihood that it is free from oversight or error, and offering a justification one cannot be confident in seems disrespectful—to fail to exercise due

[223] Ibid 12.
[224] Ibid 13.

diligence given the potential impact of consequent policy on others. Schwartzman adds that SPJ also discourages deception, which promotes stability, respect, and legitimacy. "When citizens present sound public justifications for their political claims, they manifest mutual respect for one another and thereby strengthen the political legitimacy of their society."[225]

One might prefer two alternatives to SPJ. First, one might argue that citizens and officials need not only publicly offer justifications they sincerely consider sufficient, but also that they be actively *motivated* by those justifications.

> [Without a motivational requirement] citizens may present their reasons as if they were motivated by them, even when they are not. A principle that lacks a motivational requirement seems to invite insincerity and rhetorical manipulation. Second, non-motivational reasons may not provide an adequate basis for social unity… Third, offering others reasons that one does not find motivational may imply a certain lack of respect for them.[226]

Thus, a motivational addendum to the sincerity requirement would prevent certain insincerity incentives, better promote solidarity, and avoid the worries of disrespect articulated by Audi. Schwartzman concedes that these benefits are compelling, but argues that they are not enough to overcome the drawbacks of a motivational requirement. To illustrate his point he gives the example of three different persons, each with different

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[225] Ibid 13.
[226] Ibid 14.

stances on the issue of abortion, for different reasons, and with different relations to their reasons.

- Pro-life activist Alice argues in favor of abortion restrictions in public "on the basis of biological claims about the genetic identity of the fetus," but in private truly opposes it "because she believes that ensoulment occurs at conception."[227] She does not consider the genetic identity argument sufficient to justify her position to others, nor is she motivated by it, nor does she disclose any of this.

- Pro-life advocate Beth shares Alice's religious conviction that ensoulment occurs at conception, but also maintains that citizens ought not promote policies they cannot justify according to reasons accessible to all. Beth openly admits her religious motivations, but argues in public for abortion restrictions because failure to do so "diminishes respect for human life, runs counter to the value of protecting the vulnerable, and disregards the genetic identify of the fetus."[228] Contrary to Alice, Beth thinks her public justifications are sufficient to justify abortion restrictions, even if not actively motivating her own psyche.

- Pro-life advocate Catherine is similar to Beth in every relevant way except that she is nonreligious.

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[227] Ibid 14.
[228] Ibid 15.

Schwartzman explains that Alice violates SPJ because she does not believe the public justifications she offers sufficiently support the abortion restrictions she advocates, and because she fails to disclose this. She is therefore doubly insincere. "She seems manipulative, disrespectful and more likely to pursue her political agenda regardless of whether she has sufficient public reasons."[229] But both Beth and Catherine satisfy SPJ. Both are committed to policies with sufficient supporting public reasons, and both sincerely believe they hold such reasons. Catherine of course lacks religious affiliation, and therefore presumably isn't influenced at all by a comprehensive doctrine. But even though Beth may be motivated by her comprehensive doctrine, "she insists that her public reasons stand on their own merits."[230] Both Beth and Catherine pass SPJ, but Schwartzman's real point is that given their relevant similarity, a motivational requirement that Catherine might pass but Beth might fail is unnecessary.

> The only difference between Beth and Catherine is that Beth is religiously motivated. Her public reasons do not give a full explanation for why she advocates a pro-life position, although they do explain why she believes her view is politically legitimate. There need not be any inconsistency here. One can be moved by a religious claim *and* believe that political action should follow from it only if it can be sustained by sufficient public reason. Beth is motivated by her religious convictions, but she believes that her position is legitimate because all

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[229] Ibid 15.
[230] Ibid 15.

> reasonable people have sufficient public reason to support it. Thus her political activity is compatible with the demands of public reason.[231]

Schwartzman cites Martin Luther King, Jr. to preempt the potential objection that when a person believes a reason sufficiently justifies a claim, this "is the same as being motivated by that reason."[232] That is, he wants to distinguish favorably evaluating a reason's justifying force from being *motivated* by that reason.

In a 1962 speech King argued against segregation, citing the public reasons of the "'sacredness of human personality,' the value of human freedom, and the need for social solidarity," but conceded that ultimately, "every man must be respected because God loves him."[233] Schwartzman argues that since we agree that there is nothing wrong with King's approach, public reasons need not be "self-motivating."

> Given that people will differ in how they integrate their comprehensive and political views, a demand for shared motivations is unjustifiably exclusionary. It would be enough for citizens to offer public reasons that they sincerely believe are sufficient but that are not necessarily their final or ultimate source of motivation.

Shwartzman is arguing that the reasons that actually cause a citizen to take a given political action are irrelevant, so long as the action is vindicated from a public perspective. That is, not only can one's public and nonpublic lights converge on the same

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[231] Ibid 16.
[232] Ibid 16.
[233] Ibid 16.

action, but nonpublic considerations can exclusively motivate an action, so long as it is also endorsable according to public considerations.

Schwartzman addresses three reasons why we might resist SPJ and instead endorse a *principle of private sincerity*—one that would maintain a requirement that citizens sincerely believe they hold sufficient justifications for their favored positions, but dropped the requirement that they make them public. First, one might argue that citizens needn't publicly disclose the public reasons supporting their favored policies to achieve legitimacy. Recall that Reidy argues that such a standard satisfies the liberal principle of legitimacy, so long as everyone votes in line with public reasons they find sufficiently justificatory. And on a strict reading of that principle, Reidy appears to be correct. But Schwartzman replies that citizens cannot be confident in their justifications without first subjecting them to public scrutiny. Therefore the principle of private sincerity is impossible to satisfy—we cannot sincerely believe our justifications are sufficient without submitting them to others to check for mistakes.

> They may have made important mistakes in their reasoning or missed potentially defeating counterarguments. Citizens must present their justifications to give others the opportunity to challenge their political claims. Otherwise, they cannot reasonably demand that their views be imposed through the democratic process.[234]

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[234] Ibid 19.

Notice that Schwartzman is linking the epistemic benefits of deliberation (and the epistemic downfalls of privacy) with the moral requirements of public reason. Even though Reidy's is a moral argument, and Schwartzman's is largely an epistemic argument, Schwartzman can engage and criticize Reidy insofar as the epistemic dangers of nondisclosure impact the ability of citizens to achieve the moral status of sincere belief. If Schwartzman is right, given our propensity to logical error, we cannot have confidence in the strength of a justification until it has survived public scrutiny. Therefore Reidy's so-called principle of private sincerity would seem unworkable. Reidy could of course respond that deliberation leads to groupthink, manipulation and the like, consequently *weakening* the strength of justifications that would have otherwise remained private. However, while this is sometimes the case, the balance of rewards and risks seems to favor deliberation over privacy, at least when epistemic gains are our goal. And insofar as those epistemic gains are necessary to achieve sincerity, and sincerity is essential to respect, and respect is essential to legitimacy, Schwartzman's publicity would seem essential to all of these components.

Second, following Reidy and Gaus, one might argue that a public sincerity requirement would unfairly hinder strategic political maneuvering—it might unreasonably hinder citizens' ability to persuade others and politically bargain. "Building successful political coalitions sometimes requires sacrificing sincerity and candor."[235] A third related charge is that public insincerity should be permissible so long as it is openly

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[235] Ibid 18.

practiced and expected. That is, so long as citizens and officials are confident that they privately hold sufficient justification for favored policies, they should be free to offer whatever reasons they find politically expedient in public, if everyone is aware this is the way the game is played. Bluffing is expected and therefore permissible in poker—why shouldn't the same be true for the competitive game of politics?

Schwartzman addresses these second and third objections similarly, arguing that they fail to appreciate "the significance of deliberation," and to seriously "consider the deleterious effects of a principle that permits and even encourages widespread insincerity."[236] Were the principle of private sincerity the norm and the offering of disingenuous justifications for the sake of persuasion expected, citizens would have less reason to take the justifications offered by others seriously, and more reason to raise their guard against manipulation. Schwartzman argues that under these conditions, the epistemic benefits of deliberation would be severely truncated, and polarization would be the inevitable result. "At best, public discourse would be a waste of time; at worst a source of political frustration, resentment, and hostility."[237]

Directly challenging Reidy's strategic coalition-building argument, Schwartzman argues that for the practice to be of any worth, citizens and officials must assume his favored principle of sincere public justification. "The problem with 'strategic consensus-building' is that it only works if others are persuaded to believe bad arguments."[238] This

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[236] Ibid 19.
[237] Ibid19.
[238] Ibid 20.

point, however, doesn't seem to go through as powerfully as Schwartzman implies. While strategic coalition-building might be somewhat undermined were the principle of private sincerity the accepted norm, citizens could still independently evaluate the merits of justifications offered by others, even if everyone had reason to expect no one publicized justifications they themselves found convincing. Some level of distrust might result, but Schwartzman seems to assume that any justification I offer another for the purposes of persuasion is automatically *bad*, which is not the case. The likelihood that the justification will be good may decrease, but it needn't necessarily be bad.

In further discrediting the poker analogy, Schwartzman argues that a shared expectation that a practice will occur is not reason in itself to justify or excuse that practice. Independent reasons must establish its worth, and in the case of public reason, we have many reasons to prefer public sincerity over private sincerity. That bluffing makes poker more interesting perhaps justifies insincerity for a recreational game. But simply citing the motivations persons might have to defect, the likelihood that full compliance will be low, or evidence that private sincerity and public insincerity are currently practiced, is not enough to establish the latter as best or even permissible. The expected drop off in the quality of epistemic output in light of the seriousness of politics more than outweighs these reasons—no such drawback obtains in poker.

Finally, Schwartzman returns to three objections that are commonly brought against conceptions of public reason that exclude comprehensive doctrines or relegate them to a secondary role. Requiring citizens and officials to deliberate using publicly shared reasons and values is said by some to a) prevent reasoners from communicating

the full importance of their convictions when their nonpublic motivations may be shared, b) be unavoidably haunted by the unconscious influence of our comprehensive doctrines, and c) encourage disingenuousness for those who cannot find a plausible way to defend their favored views in public language.

> Taken together, these three *insincerity* objections – involving *mistranslation*, *unconscious influence*, and *misrepresentation* – suggest that public reason undermines the moral integrity of citizens who would otherwise have the capacity, willingness, and opportunity to express their true beliefs in the political domain. Instead of fostering open and honest discussion, paradoxically, the idea of public reason leads to an atmosphere of cynicism, suspicion, and hostility.[239]

The mistranslation objection charges that when citizens convert justifications grounded in comprehensive doctrines into public reasons, they run the risk of doing so poorly, and of being disingenuous. Schwartzman cites Elizabeth Wolgast, for example, as arguing that it is less than sincere to offer others reasons that do not motivate our conclusions, but are only chosen instrumentally after decisions are made.[240] But Schwartzman emphasizes ground already covered, alluding to the lack of a need for a motivational requirement, as well as the limits and purpose of public reason.

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[239] Ibid 2.
[240] Ibid 21.

> Public reason is not a process of translation whose purpose is to give expression to any and all ethical or religious views. If no public reasons can be found that are sufficient to support a political claim, then that claim should be abandoned.[241]

Of course, while the language above implies an obligation to fully abandon such a claim, Schwartzman is likely suggesting only that positions for which sufficient public support cannot be found ought to be excluded from decisions to vote or otherwise act politically. He adds that the wide view of public reason, which he endorses, actually invites nonpublic reasons into the public forum, given that certain conditions are satisfied. "Nothing in the principle of sincere public justification precludes supplementing public reasons with arguments based on nonpublic values."[242] Citizens are free to disclose their deeper motivations, but of course not obligated to do so. But they are obligated, argues Schwartzman, to reflect on their justifications and ensure they are not assessing them more or less favorably because of the bias of their comprehensive doctrine. When it would not be plausible to expect a person whose judgment is not potentially clouded by their comprehensive doctrine to conclude similarly, then the duty of civility compels them to abstain from advocacy.[243]

Schwartzman suggests a similar solution to address the second objection—that of unconscious influence. The worry is that our comprehensive doctrines will inevitably color our political judgments, even if only unconsciously. However, when this does occur

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[241] Ibid 21.
[242] Ibid 22.
[243] Ibid 21.

without our conscious awareness, we are at least not guilty of insincerity. But since we should all be consciously aware of the *potential* of our comprehensive doctrines to cloud our judgment, even if we don't directly experience it as such when it occurs, we have an obligation to diligently scrutinize our views and ensure they are indeed sufficiently justified. "If a person cannot imagine being motivated by a public reason, or cannot imagine others who hold different comprehensive views being motivated by it, then that reason does not suffice to justify that person's political position."[244] Kent Greenwalt apparently argues that "disentangling" our religious or comprehensive doctrine reasons from our public reasons is impossible.[245] But Schwartzman rightly replies that though some may find it difficult, the fact that most issues at the constitutional level are debated without reference to comprehensive doctrines is evidence that it is at least possible.

> In rejecting this view, the ideal of public sincerity rests on reasonable assumptions about the psychological abilities of citizens in a democratic society. Deciding whether one's reasons are truly public may not be easy, but neither is it impossible.[246]

Finally, the third objection concerns misrepresentation—that SPJ is too stringent, and would thus strongly motivate citizens and officials to abandon sincerity altogether, or to withdraw from politics. Schwartzman replies that a) SPJ only applies to the public political forum, which leaves space elsewhere for citizens to deliberate as they please,

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[244] Ibid 23.
[245] Ibid 23.
[246] Ibid 24.

and even in the political forum, consistent with Rawls, the idea of public reason is not something that should be legally enforced, but only required by moral duty; b) that if SPJ puts pressure on some persons to withdraw views that cannot be justified by public reasons, this is actually a benefit; and c) while some will no doubt fail in their moral duties, SPJ is not psychologically impossible to satisfy or even unrealistically optimistic. He insists, "satisfying the demand for sincere public justification is not beyond the reach of reasonable people. While it may be aspirational, the ideal defended here is not naïve or hopelessly utopian."[247] Before closing Schwartzman emphasizes that SPJ is not an ad hoc requirement tacked onto Rawlsian public reason to address a superficial issue. It is necessary to adequately promote both legitimacy and mutual respect, and is indeed "an integral part of any adequate theory of political discourse."[248]

Comparison Summary

Before moving into chapter four, where I more thoroughly present and analyze PR and PJ, here I present a brief recap of the main similarities and differences among Wolterstorff, Audi, Reidy and Schwartzman. First, despite their differences, all four are clearly liberal theorists, which as noted in chapter one entails grounding legitimacy in the consent of the governed. Indeed, there would be little point in including their views were

[247] Ibid 25.
[248] Ibid 25.

they illiberal, for this project assumes the liberal frame. On the question of sincerity and aim, all four seem to agree that citizens should aim for justice, and only advocate positions they sincerely consider just. All but Wolterstorff adds the requirement that justifications be offered publicly, and expressed in public terms, or in Audi's case, *secular* terms.

All but Wolterstorff also seem to agree that positions advocated must not only be adequately just, but supported with adequately justifying reasons. Audi's principle of secular justification, for example, entails that citizens only advocate positions they consider adequately justified exclusively according to secular reasons. Reidy's so-called principle of private sincerity of course requires the counterfactual thought experiment – that one sincerely believe one could be motivated by the reasons one offers, were one's actual motivating reasons absent – and whether or not the reasons offered would be motivating presumably turns on their justificatory power.

Schwartzman's standard seems only a slight variant of Reidy's. Both agree that citizens must sincerely consider their justifications adequate, but Schwartzman argues that Reidy's standard is impossible to satisfy. Citizens must share their views in public if they are to have confidence in their quality, and so Schwartzman tacks on a publicity addendum producing a principle of sincere public justification. Schwartzman doesn't use the language of motivation, and instead says that a justification must simply be sincerely considered adequate, and one must sincerely believe one would continue to consider it adequate were all other complementing nonpublic reasons absent. Though Reidy does use the language of motivation in explaining what would count as a sincere justification, the

two would seem to be speaking of the same thing – the weight the public reasons in question command in a given citizen's deliberation.

A point of disagreement between Schwartzman, Reidy and Wolterstorff on the one side, and Audi on the other side, concerns motivation as it applies to consistency between reasons used to arrive at a judgment, and reasons expressed in public. None of the former required that the reasons citizens offer in public to justify their positions actually motivate their views, but Audi's principle of public motivation demanded precisely such consistency. However, as we saw, this principle is a matter of virtue, not duty, and thus can be overridden. Indeed, even Audi's less demanding principle of secular justification, which he presents as a matter of duty or moral right, can be fairly easily overridden when one's political obligations are strained by comprehensive considerations.

On the question of completeness, we saw that Reidy and Wolterstorff share the view that public reason is inadequate to answer all the questions to which Rawls intends it to apply, though Reidy is perhaps more cautious about the degree of incompleteness. Schwartzman actually *defends* the completeness of public reason in article cited in a footnote, and while Audi is largely silent on the matter, he implies confidence that his secular reasons are adequate to address the questions concerning liberty to which his principles apply.

Though he was the outsider, Audi makes a somewhat compelling case in favor of a more demanding motivational requirement than neither PR nor PJ deliver. Is motivation essential to a plausible account of public reason? In the next chapter I begin by

addressing just this question. I then argue that many of the problems cited by the above authors can be overcome by casting Rawls as offering two standards of public reason. The first is a baseline moral minimum that achieves much of what the above authors consider morally required. The second is a supererogatory ideal that produces many of the gains to respect, justice, legitimacy, and stability promoted above. Thus, we now prepare to refocus our attention on the standards of Public Representation and Public Judgment exegetically supported in chapter two, and to use insights gleaned from this chapter to judge their ability to promote these four key liberal values. And as the Rawls of *TJ* might say, *so much, then, for a brief overview of these authors' arguments.*[249]

[249] "So much, then, for…" is a common phrase Rawls comically(?) uses throughout *TJ* to close especially lengthy sections. For example, see pages 78, 135, and 258.

CHAPTER IV:
A CASE FOR PUBLIC JUDGMENT

Abstract

To settle a motivation question lingering from chapter three, chapter four opens by arguing that motivation is largely irrelevant to public reason, especially from a Rawlsian perspective. The content and requirements of Public Representation and Public Judgment are then fully articulated, and the two are evaluated according to their ability to generate justice, respect, legitimacy, and stability. Public Representation is declared necessary to achieve a requisite degree of all four, and Public Judgment is shown to achieve significant gains primarily in justice, which produces secondary gains for the other three values, especially stability. Before closing, legitimacy is revisited one last time, and after a brief scare, PR's ability to generate a requisite amount is confirmed.

The Basic Idea

In a pluralistic society, public reason has two main functions. First, it serves as a lingua franca that enables citizens to represent political positions to one another in a way that facilitates mutual understanding and justification. Among free equals, this is necessary to satisfy the duty of mutual respect, which is the value or justificatory basis of legitimacy. However, public reason is also an essential component to a decision procedure designed to produce substantively just outcomes. We do not simply desire a mode of discourse that enables mutual understanding and justification. We want the political process to produce policies appropriate for a society of free equals. Thus, the norms of public reason that govern the information allowed, activities required, and dispositions encouraged are designed to best ensure the output gets as close to ideal justice as is humanly possible.

As we saw in chapter two, when viewing his body of work on whole, John Rawls seems to promote differing standards concerning the practice of public reason. In spots he seems to allow that citizens and officials may decide serious political questions according to whatever considerations they please, including nonpublic considerations, so long as they are able to justify their conclusions in public language when pressed to do so. This less demanding standard of what I call Public Representation would seem to adequately enable the first function of public reason – that of facilitating communication and justification. Even when citizens merely translate their nonpublic arguments into public language, they are at least able to appreciate and evaluate one another's position, and

decide from a common perspective which is worthy of endorsement. When we add the requirement that they only advocate positions and present arguments they sincerely consider sufficiently reasonable or just, Public Representation promotes the second function of public reason as well. For with inputs more closely approximating ideal justice, we can expect outputs more closely approximating ideal justice. However, PR allows citizens to decide what they consider adequately just privately, which as we learned last chapter, has epistemic risks. Setting the threshold at positions, justifications, and polices considered adequate or sufficient would seem epistemically suboptimal, for given that the ultimate outcome of the political process is likely to fall short of ideal justice regardless of our efforts. When we settle for positions, justifications, and policies that are admittedly less than best at this stage, the outcome is likely to suffer. The process of deciding political questions from a nonpublic perspective, and only evaluating a position's reasonableness as an afterthought, would also seem to undermine the quality of the final product.

Luckily, Rawls also argues that citizens should go above and beyond PR. In scattered spots throughout his work he makes a case that they are to spend extensive effort developing political conceptions of justice, that these conceptions are to be freestanding from their comprehensive views, and that citizens are to use their perspective to reason through serious political questions, drawing on public reasons alone, aiming not for merely adequately reasonable positions supported with adequate justifications, but for positions considered most reasonable supported with the best justifications. This so-called standard of Public Judgment corrects many of the

weaknesses of Public Representation, and consequently promises to generate outcomes more closely approaching ideal justice. PJ would therefore seem better equipped to facilitate the second function of public reason, at least when compared PR. Given the interconnectedness of the concepts, this is beneficial not only to the value of justice, but also to respect, legitimacy, and stability. How is this the case?

As we justifiably have more confidence in our political positions as a result of practicing PJ, we better respect those we offer our justifications, and those ultimately affected by our votes. Also, recall from chapter one that legitimacy is impossible without a requisite degree of justice. As practicing PJ makes our positions more just, our political order consequently becomes more just, and as a result, this prerequisite of legitimacy is settled. Further, gains in justice, respect and legitimacy positively impact stability, for citizens' allegiance to the state is strengthened when they are shown greater respect, are reassured that their state is legitimate, and have reason to consider their political order more just.

Thus, I argue that we can ameliorate the apparent inconsistency in Rawls's work by interpreting the inferred standard of Public Representation as a moral minimum, and the more demanding inferred standard of Public Judgment as an attractive aspirational ideal. While Public Representation enables the first function of public reason, and partially enables the second, Public Judgment would seem to better facilitate both. However, Rawls did not explicitly present two separate standards. He wrote prolifically on public reason, and offered his position as a coherent whole. Interpreting his view in the way I do therefore risks misrepresenting his intentions. That said, casting the more lax

standard as a matter of moral obligation, and the more stringent standard as a matter of moral supererogation, fits neatly within a Rawlsian Liberal frame, and makes it more coherent and appealing. If this approach can effectively resolve the tension, one would expect that Rawls would not mind.

But before more fully making my case, first, to clear the air and resolve any confusion resulting from coverage of the views from the last chapter, I consider the question of motive—of whether a Rawlsian conception of public reason needs some sort of a strong public motivational requirement, perhaps similar to Audi's principle of secular motivation. I answer this question by revisiting key sections from last chapter, and ultimately conclude that at least from a Rawlsian perspective, motivation is largely irrelevant to public reason.

The Question of Motivation

Given many of the arguments covered last chapter, one might assume that any plausible account of public reason should contain a strong motivational requirement. Such a requirement might mandate that citizen advocacy be exclusively motivated by the right sort of reasons, and were such a requirement to incorporate a sincerity component, that the reasons offered in public to support a favored position match the reasons supplying the genuine motivational impetus for that policy. David Reidy argues that while Rawls took both sincerity and motivation seriously, and we should as well, a

standard as demanding as the one suggested above is unnecessary.[250] Instead, we can simultaneously satisfy sincerity and motivational requirements via a counterfactual thought experiment. He of course argues that citizens may presumably arrive at political decisions for whatever reasons they please, so long as they can sincerely imagine themselves exclusively motivated by public reasons to support a policy were their current nonpublic motivations absent.[251]

While Reidy's approach seems plausible, some might argue that when citizens are unmotivated by the public reasons they offers others—even when they sincerely believe they *could* be motivated by those reasons were their actual motivators absent—this potentially fails to show others adequate respect. They might argue that this commits a sort of disingenuous patronization. Though not addressing Reidy, Robert Audi illustrates this worry well in making a case for his principle of secular motivation. As we saw last chapter, Audi argues that while deliberating internally according to one's comprehensive doctrine then crafting a political justification for public consumption may demonstrate more respect than not offering public reasons at all, maintaining a disconnect between what moves a person and what that person expresses to others makes the political process superficial and insincere at best, and manipulative at worst. That is, the absence of the right sort of motivational requirement enables behavior that seems condescending in a

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[250] Rawls's Wide View of Public Reason: Not Wide Enough 57.
[251] Ibid 61.

way incompatible with respect.[252] Audi argues for this point vividly in an article not included last chapter, "The Separation of Church and State and the Obligations of Citizenship," published in *Philosophy and Public Affairs* in 1989.

> Even if, in the abstract, [the secular reason, or for our purposes, the *public* reason that I offer as justification] is a sound basis for my action, I do a wrong when, in this way, I give others a reason that does not move me, and invite them to be convinced by it. Does it not smack of manipulation to give reasons that do not move me, in order to get others to do what I want? I use the reasons as psychological levers to produce belief on a basis that does not carry my own conviction.[253]

Audi would charge that Reidy's counterfactual thought experiment enables just such manipulation. In Reidy's defense, genuinely believing that one could be motivated by a line of public argument one offers others does satisfy a sort of sincerity, at least so long as participants understand the norms at play, and do not mistake publicly expressed justifications for active motivators. Reidy's standard thus generates some degree of respect.

However, Audi goes on to argue that such an approach would undermine mutual trust, and consequently stability. When it is well known that citizens and officials do not accept or regularly satisfy a robust public motivational requirement that ensures their

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[252] "The Separation of Church and State and the Obligations of Citizenship," Philosophy and Public Affairs, Vol. 18, No. 3 (Summer, 1989), 283.
[253] Ibid 283.

public justifications match their internal motivations, citizens may worry that the arguments others offer in public mask alternative, perhaps nonsecular (or nonpublic), justifications. If they disagree with a position, and especially if that position threatens to produce a policy that will constrain their liberty, they may become resentful if they believe those who support it do so for reasons they cannot reasonably appreciate. And as Rawls says in the first chapter of *TJ*, "distrust and resentment corrode the ties of civility, and suspicion and hostility tempt men to act in ways they would otherwise avoid."[254] Perhaps, then, Audi has a point – maybe when citizens are not motivated by the arguments they offer in public, stability is at risk.

However, Rawls himself seems to find motivation relevant only to stability insofar as citizens must possess a general disposition to do the right thing for its own sake, and to answer just treatment with just treatment. Accordingly, he seems to assume that citizens are not directly motivated by their political judgments, but instead by the general desire to do justice or be a good citizen, and he sees no reason for this to raise any concerns. Reasonable persons possess *a sense of justice* by definition, and are consequently motivated to act in accordance with it. That is, this "sense of justice is an effective desire to apply and act from the principles of justice and so from the point of view of justice."[255]

As briefly discussed in chapter one, in the third section of *TJ* (and also early in *PL)*, Rawls argues that this desire develops over the course of a three-stage process,

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[254] *TJ* 6.
[255] *TJ* 497.

beginning in childhood, growing as a member of a just association, and fully culminating as a citizen in a just society.[256] A potent combination of the deep psychological principle of reciprocity and the Aristotelian Principle enables each stage to build on those previous, generating motivations grounded in progressively more abstract notions. The last stage generates principle and conception-dependent desires, and consequently principle guilt, which enables persons to be moved to do the right thing simply because one is committed to some ideal.[257] Reasonable citizens are thus motivated to act according to their political judgments simply because they are committed to an ideal of justice captured by their conception of justice, and require no further incentive. Whether or not their sense of justice develops in the way Rawls describes, he assumes reasonable citizens will simply possess it.[258] "Reasonable persons, we say, are not moved by the general good as such, but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept."[259]

Contrary to Audi, motive for Rawls therefore seems largely irrelevant to public reason. As motive pertains to stability, citizens require assurance that others can be expected to fulfill their civic duties and remain allegiant to the state before they themselves have sufficient reason to do the same. But from the Rawlsian perspective, *that* reasonable citizens will be motivated to act in accordance with their conception of justice

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[256] *TJ* 429.
[257] *PL* 82.
[258] *TJ* 17.
[259] *PL* 50.

is taken for granted, and therefore the specific details of *why* or *how* they are motivated seems neither here nor there.

We find additional reason to consider motivation irrelevant to public reason in the work of Micah Schwartzman. Recall that in "The Sincerity of Public Reason" he makes a strong case for publicity. That is, he agrees with Rawls that citizens ought not coerce one another with policies they cannot sufficiently justify according to public reason, but argues that candidate justifications must be shared and discussed in the public political forum before we can have confidence in their quality. In sharpening the contours of his view he considers whether motivation is a necessary component of public reason, using the example of three citizens advocating similar views on abortion, but apparently arriving at their positions via differing processes. Recall Alice and Beth, both committed to a religious comprehensive doctrine that Schwartzman cites for providing the motivation behind their positions. However, while Beth sincerely believes her position can be vindicated as sufficiently just by public reason, Alice makes no such claim – she reasons, advocates and votes according to her nonpublic religious views. Also recall Catherine, who while similarly advocating more stringent abortion restrictions, is nonreligious.

Schwartzman argues that although Alice's position may very well be consistent with justice, since she lacks public reason to believe as much, she cannot be confident that her view is sufficiently reasonable, and on that count she is morally blameworthy. But given that both Beth and Catherine possess public justifications for their views, the

differences between them are inconsequential. We therefore we have no reason to make a fetish of motivation. The following key passage is worth repeating.

> The only difference between Beth and Catherine is that Beth is religiously motivated. Her public reasons do not give a full explanation for why she advocates a pro-life position, although they do explain why she believes her view is politically legitimate. There need not be any inconsistency here. One can be moved by a religious claim *and* believe that political action should follow from it only if it can be sustained by sufficient public reason. Beth is motivated by her religious convictions, but she believes that her position is legitimate because all reasonable people have sufficient public reason to support it. Thus her political activity is compatible with the demands of public reason.[260]

Motive is unimportant for Schwartzman because he is primarily concerned with the epistemic arguments in favor of publicity, for he considers publicity necessary to achieve sincerity, and consequently respect and legitimacy. But what *is* important for Schwartzman is judgment. The reasoning processes Alice, Beth and Catherine go through to reach their conclusions must be reasonably expected to produce just outcomes. This is because lacking such reassurance, it would be incredibly disrespectful to use such conclusions as a basis for political coercion. Assuming that Beth has shared her public justification with others, and it has survived public scrutiny, we can be confident that it more likely approaches whatever the most reasonable abortion position may be, at least

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[260] The Sincerity of Public Reason 16.

compared to a position she might have held had she kept her view private. But the same can be said of Catherine. The fact that Catherine is nonreligious indicates to Schwartzman that she must be motivated by the public reasons supporting her view. But this distinction does not diminish her view's epistemic or moral status compared to Beth's. Both have formulated justifications sincerely considered adequate, and both have confirmed their views in public. Both can therefore be confident that their positions are indeed adequately reasonable, and may advocate them without showing their fellow citizens disrespect.

One worrisome difference between Beth and Catherine might be that the presence of Beth's religious views might influence her ability to assess public arguments. That is, perhaps she is inclined to side with public arguments that align with her religion, and reject those to the contrary, which would potentially skew her judgments in a less reasonable direction. However, Schwartzman recognizes as much and adds the stipulation that we are to attempt to minimize the influence of our nonpublic views on our political positions. While some degree of residual influence may be unavoidable, we escape blame so long as we make a good faith effort to root out these sorts of influences. So long as Beth only advocates and votes for policies sincerely considered adequately just, it is inconsequential whether her religious views converge on the same policies, provided that she has taken reasonable steps to ensure her religious views only align with her public convictions, and do not determine them.

Thus, while both Rawls and Schwartzman give us good reason to think motivation is only indirectly relevant to public reason, Schwartzman gives us some

reason to think that the way we decide political issues is directly relevant. Insofar as we think through political questions from a public perspective using public reasons, and openly evaluate our arguments with the assistance of others, our confidence may increase that our views are reasonable. And to the extent that we allow our positions to be skewed by nonpublic considerations, and keep our arguments private, we can be less confident that they are reasonable. The motivation question can therefore be set aside. Rawls assumes reasonable citizens will possess appropriate motivation to act in accordance with justice, and Schwartzman has shown that in any case, whether a citizen finds their public justifications motivating is irrelevant, so long as they have exercised their judgment in a way that promotes positions that are adequately reasonable.

Public Representation

While some sort of public judgment component may be beneficial to public reason, and even a necessary part of a full Rawlsian account, there is of course strong textual evidence that Rawls himself did not intend to require such a standard, most notably supported by his proviso. Further, he explicitly says in *PL*, that "it is left to citizens individually—as part of liberty of conscience—to settle how they think the values of the political domain are related to other values in their comprehensive

doctrine,"[261] which implies that he might allow our nonpublic convictions to directly determine and order our political values, in a way Schwartzman argued would skew our judgments in a less reasonable direction. On this weaker interpretation, which I of course call Public Representation, citizens and officials are free to decide political essentials and matters of basic justice according to whatever considerations they please, so long as they are able in due course to provide adequate justifications supporting favored policies in public language. While this standard may be consistent with some of what Rawls wrote, I argue that it suffers from several weaknesses when we judge its ability to promote justice, respect, legitimacy, and stability.

First, building on the arguments of Schwartzman, PR would seem to produce political judgments that might be prone to stray from ideal justice. Given the burdens of judgment and the limits of human reason, it is fair to assume that thinking through political questions according to comprehensive assumptions and then translating them into public arguments will produce conclusions likely to be less reasonable than those reached from a thoroughly public perspective. For PR permits a level of separation that unnecessarily complicates the deliberative process, and consequently weakens its output. This is illustrated by the following example.

Consider a football referee who happens to moonlight as an ice skating judge. Were he tasked with officiating a football game, he might be able to evaluate the teams' performances from the perspective—that is, using the rules and values—of ice skating.

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[261] *PL* 140.

Whenever a player committed a questionable action, he could attempt to judge it according to the rules and values of ice skating, make the call accordingly, and vindicate his judgment with a justification cast in football terms. For example, perhaps he finds a receiver's end zone celebration contrary to the class and poise valued by ice skating, consequently throws a penalty flag, and then justifies this action by articulating an argument grounded in the football concept and using the football language of *unsportsmanlike conduct*. While this referee's method may technically work, we would expect him to do a better job and more accurately officiate the football game according to its rules and values were he to set aside considerations concerning ice skating, saturate his mindset with the rules and values of football, and evaluate the players' actions exclusively from that perspective. It would seem reasonable to think that to the extent that non-football considerations enter into his deliberation, his calls are likely to suffer.

Now consider a citizen who decides political questions from a nonpublic perspective, drawing on nonpublic reasons, who subsequently translates positions sincerely believed adequate into public language, or justifies them with supplementary public arguments. Just as we reasonably expected the football referee's calls to stray from the core values and goals of football when he officiated from the perspective of an ice skating judge, we can also reasonably expect the political decisions of this citizen to stray from the core values and goals of theorizing about justice when they decide political questions from the perspective of their nonpublic commitments. And given the elaborate constraints Rawls places on their judgments to ensure their conclusions are consistent with our considered convictions, while we can never completely achieve the objectivity

of original position agents, we can at least take reasonable steps to mitigate the influence of potentially clouding considerations. Therefore, deciding political questions from a fully *nonpublic* perspective, even if we were required to only advocate positions sincerely considered adequate, would seem counterproductive if our aim is justice.

Considering how difficult sorting through political issues can be, the additional complexity of translation or subsequent supplementary justification opens the door to additional error. It is hard enough to maintain focus and decide political questions with due care when we concentrate and are free from outside distraction. For we are imperfect reasoning machines. We therefore have good reason to eliminate steps and processes that hinder the effectiveness of our cognitive faculties. The translation that PR permits would seem to be one such hindrance. To the extent that our decisions suffer as a result, we can expect our positions to drift further from those that are most reasonable, and consequently expect our public policies to drift further from ideal justice.

My second concern is that PR threatens to undermine mutual respect. Given my worries concerning its ability to produce just outcomes, one might argue that citizens who practice PR fail to show those constrained by the policies they endorse adequate respect. While complementing PR with Reidy's standards might partially mitigate a respect worry founded on insincerity concerns, if we have reason to think that PR leads to suboptimal conclusions, sincerely endorsing the public justifications used to represent our nonpublic judgments becomes difficult. For recall Schwartzman's contention that private sincerity is impossible to achieve because we can never be confident in our political judgments until they have survived public scrutiny. Any sincerity compatible with PR, given its lack

of a publicity requirement, would likely be half-hearted. Perhaps one could sincerely *believe* that one's views are adequately reasonable, but this is only possible insofar as one is unaware or unappreciative of the epistemic dangers of reasoning in isolation, as well as the dangers of reasoning from a nonpublic perspective. We can therefore conclude that PR facilitates some weak degree of respect, but not much.

My third worry concerns legitimacy. Recall that Rawls's principle of liberal legitimacy states that "the exercise of political power is fully proper only when exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason."[262] Reidy explains that this principle is based on a deeper commitment to "reciprocity in justification," which is grounded in an even deeper commitment to mutual respect. Mutual respect is required in light of "each citizen's capacity for independent judgment regarding the aims and limits of political action."[263] We might say then that when citizens fail to satisfy the liberal principle legitimacy, they disregard their fellow citizens' capacity for rational agency by failing to show them why one advocates and votes as one does with reasons and reasoning all parties endorse. Showing a person potentially subject to a favored public policy respect requires that one's position on that policy is vindicable from a perspective all appreciate—justifiable with reasons none may reasonably reject. PR would therefore appear able to not only satisfy the demands of the liberal principle of legitimacy as explicitly articulated by

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[262] *PL* 137.
[263] "Reciprocity and Reasonable Disagreement," Philosophical Studies. (2007) 132:243-291, 248.

Rawls, but also the moral foundations behind that principle. PR allows public reason to serve as a lingua franca that adherents to a wide range of comprehensive doctrines may use to justify their political judgments to one another. This appears to satisfy the demands of mutual respect. However, the epistemic worries mentioned above present a problem.

Recall from chapter one that for Rawls the possibility of legitimacy presupposes a requisite degree of justice. He explains this explicitly when distinguishing his own conception of legitimacy from Habermas's, and implies as much in the wording of the principle of liberal legitimacy, which requires a particular sort of constitution, which will enumerate protected liberties, which are matters of basic justice. Therefore, since legitimacy depends on a requisite degree of justice, to the extent that PR produces outcomes that are less reasonable and less just, legitimacy is undermined. However, we needn't overstate the worry. I do not argue that PR is necessarily incapable of producing adequately just outcomes, but only that we have reason to think that it allows deliberative methods that seem suboptimal if justice is our goal. Thus, all we can say here is that while PR does enable reciprocity in justification, and it appears to satisfy the explicit demands of the liberal principle of legitimacy, to the extent that it produces less reasonable judgments it risks drifting a polity so far from justice that legitimacy is precluded. But this is only a risk, not an inevitability.

Last, PR would seem to undermine stability. This is because when the above weaknesses are known, citizens will have less confidence in the justice and legitimacy of their state, and less reason to think they are being respected by their political peers. With the knowledge of PR's tendency to produce suboptimal outcomes, the arguments citizens

offer one another will be devalued. Citizens may come to lose some degree of faith in the justness of their institutions, and even resent those who present arguments in public that are the product of an avoidably flawed cognitive process.

Compounding these concerns is the worry that some might consider PR as enabling citizens to impose their comprehensive doctrine on others. Since PR allows citizens to decide political questions according to their nonpublic commitments, those whose liberty is constrained after a vote may become understandably resentful if they have reason to think many citizens endorsed the policy for nonpublic reasons. Even when PR requires that citizens only advocate positions they sincerely consider adequately just, this doesn't completely mitigate this concern. For the requirement is weak enough to allow some to advocate policies aligning with their nonpublic convictions, even when recognizing such policies are only *adequately*, and not *maximally* just. Given the stakes, this alone may be reason for some to be understandably resentful. For all these reasons, PR seems a weak promoter of stability.

Thus, we can see that PR is a weak standard from the perspective of all four values considered. However, given that PR does promote justice, respect, legitimacy and stability to some degree – especially when compared to Wolterstorff's suggestion that we largely abandon the Rawlsian standards of public reason altogether – we might not jettison it completely. As I have suggested, perhaps it is useful as a baseline standard or moral floor, for it at least seems to generate a requisite degree of legitimacy. The case for retaining PR is strengthened when we consider that a more demanding standard might be burdensome for some citizens to satisfy. Recall that Wolterstorff, who seemed to assume

that Rawlsian public reason requires something akin to PR, argues that the demands of public reason are already difficult enough, for it is a psychological hardship for some religious citizens to *translate* their nonpublic arguments into public form. While this concern may be overstated, and it is not reason enough to adopt Wolterstorff's vote-centric alternative, it is perhaps reason to maintain PR. Should we *require* more than PR, resentment and an increased incentive to ignore public reason altogether might result for some citizens. The potential instability a more demanding requirement might generate, combined with PR's ability to at least generate some benefits, gives us good reason to endorse it as a moral minimum, despite its weaknesses.

Public Judgment

While Public Representation may serve as an appropriate moral minimum, as we have seen, it leaves much to be desired. Thus, we now consider a more demanding set of norms that consequently ameliorates many of the weaknesses of PR. The now familiar standard of Public Judgment entails thinking through serious political questions from the perspective of one's political conception of justice, and drawing exclusively on public reasons. For political purposes, it requires that one consciously aim for positions one sincerely considers most reasonable, to express justifications in public one sincerely considers most reasonable, and to only advocate policies one sincerely considers most reasonable. Luckily for exegetical fidelity, Rawls endorses generic sincerity, and as we

will see, he recognizes and extols the benefits of public deliberation. Rawls would even seem to implicitly consider deliberation *necessary* insofar as reaching wide reflective equilibrium is also necessary. With confidence that Rawls would support it, and the basic idea reiterated so much already, we can finally articulate an explicit Principle of Public Judgment.

> *Citizens and officials are to pursue, vote, and advocate only those positions they consider most just, offering only justifications they consider best, as assessed from a public perspective with public reasons after open and sincere deliberation with their peers.*

The *aim* component of PJ holds that citizens and officials seek and advocate only those policies they earnestly consider upon due reflection to be the *most* just or *most* reasonable, as opposed to policies considered *sufficiently* or *adequately* reasonable. This requirement doesn't overestimate the epistemic resources of citizens and mandate certainty, but instead marks the most reasonable policies as the *goal* of public reason, precluding rationalizations a lesser standard might invite. For example, the aim requirement blocks citizens from consciously privileging policies considered adequately just, but not most just, that happen to coincide with their nonpublic convictions. It also promotes the value of justice by improving the output of political decisions, for given our fallibility, we will inevitably fall short of whichever standard we target, and therefore need to aim for ideal justice if we hope to even approach it.

PJ also contains a *publicity* component that mandates citizens share their internal thought processes in the public political forum, in the hopes of improving the positions of all. In doing so, as established by Micah Schwartzman last chapter, the output of the political process is greatly improved. And when coupled with the aim component, publicity does even more to promote stability. For when engaged on common footing in the shared exercise of public reason in search of the most just policies, with less fear of being manipulated or presented arguments believed less than best, citizens are bound to come away feeling more respected, more confident in the justness of their society, and consequently committed to its perpetuation, as well as to one another.

Of course, PJ is at odds with Rawls's proviso. Recall that the proviso stipulates that comprehensive doctrines may be injected into the deliberatory fray at any time, so long as such considerations are supplemented with adequate public reasons in due course. However, PJ does not exclude comprehensive doctrines from the political forum completely. I suggest a revised proviso that relegates comprehensive doctrines, both religious and secular, to the role of what Rawls calls *conjecture*. Accordingly, nonpublic reasons are appropriate in the public political forum on two occasions. First, when used to assuage the anxiety of citizens who worry that a favored policy may conflict with their nonpublic convictions. Nonpublic reasons may be used, for example, to offer interpretations of comprehensive doctrines that make certain policies seem more palatable to adherents. However, citizens who exercise this option must be careful to do so in good faith—the revised proviso is not an excuse to manipulate.

Second, nonpublic reasons may be used in the public political forum in good faith to show dissenters they have good reason to commit to the liberal project from within their comprehensive doctrine. PJ is consistent with Rawls's invitation to citizens to buy into the overlapping liberal consensus for whatever reasons they like, including reasons grounded within their comprehensive doctrines. It is only when executing their obligations as citizens that they must set aside comprehensive considerations and adhere to the mandates of PJ. (And here *must* only means *if they are to achieve all the benefits PJ offers*.) This segregation of one's reasons for different purposes isn't unusual. A judge, for example, may commit to the judiciary for any number of reasons—for the money, to gain the respect of her family, or even to please God. But when acting as a judge, these reasons must be set aside. She would be a bad judge, if a genuine judge at all, if she decided cases according to which ruling would best grow her personal fortune, best win the approval of her mother, or best satisfy the demands of her religion. Similarly, citizens may appeal to nonpublic reasons to recruit newcomers to liberalism or to solidify existing commitments, so long as this is carried out in good faith (without intentionally misrepresenting another's comprehensive doctrine). And accordingly, citizens may introduce into the public political forum and take into account nonpublic reasons for these purposes, so long as their behavior is otherwise consistent with PJ.

Below I carefully unpack and argue for PJ's aim and publicity components in separate sections, enlisting the help of authors covered last chapter to assess how each promotes the four core values reiterated so much already. I then explicitly articulate a revised version of Rawls's proviso that is consistent with PJ, further clarifying the role of

nonpublic reasons it allows. Before closing I revisit legitimacy one last time, and save potential objections and responses to my view for the next and last chapter, which is devoted entirely to staving off what I consider the three most pressing criticisms of my presentation of Rawls in general, and of PJ in particular.

The Aim Component

The target of public reason according to PJ is the *most* just or *most* reasonable position relevant to a given issue. This standard is made explicit to address the vagueness of aim found in Rawls's primary works, and to address the arguments of some contemporary liberals who endorse a weaker standard. I mentioned in passing in chapter two that in some passages Rawls seems to imply that citizens and officials are to seek policies that are the *most* reasonable or *most* just, and to therefore base their advocacy on reasoning and justifications that seem *best*. But in other passages I concede that he implies that merely *sufficiently* reasonable policies and justifications are good enough. And as we saw last chapter, this ambiguity has permeated into the secondary literature. Why, then, does PJ aim as it does?

Fist, aiming at the best or most just policies bolsters the epistemic benefits of deliberation, and in this way promotes the value of justice itself. Our rational capacities are of course imperfect, and therefore bound to fall short of whatever mark they seek. Though we may be incapable of achieving perfect justice, we must aim high if we hope to even approximate it. This standard does not naively overestimate citizens' abilities or resources, and recognizes that we can never be completely certain that our favored

positions are indeed the most reasonable or most just. Targeting the most just policy as a goal, rather than stipulating it as a necessary achievement, takes into account our limited epistemological resources, and only asks that we pursue it in good faith, never knowingly allowing our personal biases to cause us to settle for second best solutions.

Micah Schwartzman actually addresses this issue and concludes differently. Utilizing the work of Gerald Gaus, he argues that sufficiently reasonable or sufficiently justified positions are all citizens and officials need settle upon to satisfy the demands of public reason. Schwartzman also endorses a sincerity component, but argues that it only requires due reflection and correspondence between one's beliefs and one's statements. It does not require only supporting political positions that one believes to be the very best. Schwartzman and Gaus endorse the sufficiency condition for practical reasons—because our epistemic position is limited, and because our resources, including time, are finite. They argue that we are simply never in a position to conclude with complete certainty that our views are the most justified or most reasonable, and therefore any standard more demanding than mere sufficiency would prove unrealistic and impracticable.

However, though Schwartzman and Gaus are correct that we can never be completely confident that our justifications and favored policies are indeed the absolute best, perhaps instead of lowering the bar we should instead continue to aim high, but simply concede that perfection is unattainable. Citizens can be encouraged to advocate according to what they in good faith take to be the best justifications for the most reasonable or most just policies. But in light of their fallibility and limited resources, we might only require that they be sufficiently confident in the justness of their positions,

having put forth a reasonable amount of time and effort. Rather than needlessly aiming at merely sufficient *targets*, we can instead require of citizens reasonably sufficient *efforts*.

This is preferable for at least two reasons. First, because while requiring actual and confident convergence on the most just position might prove impossible, it is not impossible to earnestly pursue it. Though we may never be sure that we actually hold it, we can nonetheless make a reasonable good faith effort to seek and only advocate according to what we sincerely consider most just. Requiring the earnest *pursuit* of the best position, rather than assured attainment of it, is desirable in light our fallibility and limited resources. Recall how Schwartzman critiques Hampshire's conception of sincerity—a conception that requires complete confidence that one's beliefs are not influenced by unconscious forces.[264] Schwartzman points out that this conception of sincerity fails to appreciate the moral relevance of correspondence between what one consciously believes and what one communicates to others. Similarly, if when attempting to identify the proper target of public reason we settle for merely sufficient solutions and sufficiently justifying supporting arguments because we cannot be completely certain that what we take to be the most just are indeed the most just, this neglects the moral significance of pursuing excellence and seeking ideal justice, as well as the epistemic benefits of doing so, which as we have seen, have secondary moral benefits as well. Further, attempting to put forth some requisite degree of effort to sort through reasons and evidence when our decisions will potentially bear on the liberty of others does not

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[264] The Sincerity of Public Reason 10.

seem too much to ask. In light of the epistemic dangers of settling for policies and justifications that merely seem *good enough*, and given the stakes of public discourse—laws that constrain, enable, coerce and the like—it is prudent and responsible to shoot for perfection, even if we will certainly fall short, and cannot know for sure just how far.

Further, consider the possibility that in a society where a mere sufficiency standard is the norm, what counts as sufficiently reasonable could become continually weaker. As citizens make their positions public and engage in wide reflective equilibrium—taking into account others' conceptions of justice to adjust their own—if all submit positions, justifications and conceptions admittedly less than best, this could have a deleterious effect on the positions of all. For the views one communicates in public will inform others' standards as to what counts as reasonable—as to what sorts of policies are convincing to other intelligent, sincere persons committed to public reason. When many citizens publicly advocate for positions they consider less than best, this will progressively lower the bar. Given that the threshold for a position to be adequately just is a few steps below the position one believes *most* reasonable or justified, a mere sufficiency standard would in this compounding way potentially drift the status quo further and further from the most reasonable position, and therefore further and further away from ideal justice. However, were all committed to only promoting policies believed most just from the outset, the drift would likely be in the direction we desire—*toward* ideal justice.

The above worry is further compounded when we consider that when sufficiency or adequacy is all that is required, some will be tempted to allow their nonpublic

convictions to influence their judgments in a way detrimental to the epistemic benefits of PJ. When only required to advocate positions that are reasonable enough, a person might privilege positions that align with their comprehensive convictions, even when they believe some other position is more just. Further, given that "adequate" and "sufficient" are somewhat vague notions, they even invite persons to loosen their standards to accommodate positions that happen to align with their nonpublic views, even when views consequently encompassed are clearly inferior to the position one considers most reasonable. An explicit call to pursue, communicate, and advocate positions citizens sincerely consider *most* reasonable largely avoids these problems.

In light of the above, I argue that the sufficiency condition be moved back a stage, and applied to the amount of time and energy citizens must spend investigating and deliberating over important political questions. Citizens cannot be expected to spend all of their time and resources developing a conception of justice and thinking through political matters. Instead, according to PJ they are only to devote adequate time and effort. I leave open exactly how much is appropriate, and only say that it would increase in proportion to the importance of a given issue to basic justice, as well as the citizen's impact on the policy process. Supreme Court Justices considering the constitutionality of a city's same sex marriage ban, for example, would need to invest considerable time and effort, given the stakes involved, and their impact on the outcome.

The Publicity Component

In advocating a publicity component of PJ, I endorse Micah Schwartzman's arguments concerning the epistemic benefits of open deliberation. Schwartzman makes a very strong case that decisions are better when they are the result of open deliberation, for reasoning mistakes are more likely to go unchecked when our arguments are not exposed to external evaluation. On the other hand, when we openly think through issues together in a cooperative spirit, errors are more easily spotted, relevant premises some might not have otherwise considered are shared, and the quality of decisions is likely to improve. Indeed, Rawls himself recognizes the epistemic benefits of open deliberation.

In *TJ* he outlines these benefits in a section on the status of majority rule. Why is it the case that deliberation among several devoted reasoners tends to produce better conclusions than thinkers in isolation? Because our standpoints frustrate full disinterestedness and tether our perspective, thus limiting our access to full information, as well as our ability to objectively assess the information we have. "In everyday life the exchange of opinion with others checks our partiality and widens our perspective; we are made to see things from their standpoint and the limits of our vision."[265] Rawls argues that deliberation can even be beneficial for original position agents, despite their built-in resilience to bias.

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[265] *TJ* 315.

> No one of them knows everything the others know, or can make all the same inferences that they can draw in concert. Discussion is a way of combining information and enlarging the range of arguments. At least in the course of time, the effects of common deliberation seem bound to improve matters.[266]

Rawls then agrees that deliberation both widens and enriches our views, making it reasonable to think that conclusions drawn post-deliberation are superior to those drawn in isolation.

A publicity requirement is also consistent with Rawls insofar as it is necessary to achieve wide reflective equilibrium. Recall that citizens reach narrow equilibrium when their own considered convictions are coherently balanced by ordering principles, but that wide reflective equilibrium requires taking into account the conceptions of justice endorsed by others.[267] Open, sincere deliberation would therefore seem essential to Rawls's aims, for it is impossible to assess and incorporate the political conceptions of others unless they are first communicated. Also, as we learned in chapter one, taking on the perspective and adopting the interests of others is required by the natural duty of mutual respect, and to facilitate this Rawls explicitly states in IPRR that a polity should arrange for "the providing for public occasions of orderly and serious discussion of fundamental questions and issues of public policy."[268] He even clarifies in IPRR that he

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[266] *TJ* 315.
[267] *PL* 384.
[268] *PL* (IPRR) 449.

considers the terms "well-ordered constitutional democracy" and "deliberative democracy" synonymous.

> Here I am concerned only with a well-ordered constitutional democracy—a term I used at the outset—understood also as a deliberative democracy. The definitive idea for deliberative democracy is the idea of deliberation itself.[269]

Thus, independent of its benefits, we can see that there is also much Rawlsian precedent for a publicity component in a conception of public reason.

Thus, in light of Schwartzman's and Rawls's arguments, publicity clearly improves the outcome of the political process, and in this way promotes justice. It also promises to boost stability, for when citizens otherwise following the demands of PJ openly discuss the reasons supporting their favored positions, good will and mutual trust naturally result. Also, given the concepts' interconnectedness, publicity promotes respect and legitimacy as well. Publicity even has bearing on citizens' ability to satisfy the aim component of PJ, for one cannot advocate for positions one sincerely considers most reasonable until thinking them through from a public perspective in concert with others. The possibility that publicity will allow charismatic participants to manipulate others, or that it might lead to groupthink, might temper our confidence in its benefits. But the former is mitigated by PJ's aim component, and the latter could be addressed as a practical matter, perhaps by assigning the role of devil's advocate to a sub group.

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[269] *PL* (IPRR) 448.

The Role of Nonpublic Reasons

Having presented and argued for the aim and publicity components of PJ, we now turn to the role nonpublic reasons consistent with it. Recall that Rawls of course asks citizens to develop political conceptions of justice by engaging in narrow and then wide reflective equilibrium that are "formulated in terms of certain fundamental ideas viewed as latent in the public political culture of a democratic society,"[270] using reasons and values none within such a society could reasonably reject. We are to avoid incorporating deep metaphysical commitments and ethical matters beyond the scope of justice, and constrain our conceptions to only what is necessary to address political questions, for this avoids the unnecessary disagreement and consequent division more comprehensive conceptions would invite. When all reasonable citizens converge on generically liberal conceptions as Rawls expects, and commit to answer political questions from the perspective of their conceptions, reciprocity in reasons is enabled, and with it respect, legitimacy, and stability for the right reasons.

But this isn't to say that Rawls leaves no room for nonpublic reasons at all. As we saw in chapter two, the early Rawls did in fact maintain a hard line against nonpublic reasons in the public political forum, and especially against those apparently based on leaps of faith. Recall the quote from *TJ* that "it is a matter of dogma that faith is the life of the soul and that the suppression of heresy, that is, departures from ecclesiastical

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[270] *PL* 175.

authority, is necessary for the safety of souls."[271] In fact, Rawls was even more clearly opposed to the use of nonpublic reasons for political purposes prior to *TJ*. "Outline of a Decision Procedure for Ethics"[272] (or ODPE) is an article in which he makes an early attempt (1951) to represent our ethical judgments within the space of reasons for conscious understanding and evaluation, and in that way to make them objective. He describes the process of competent moral judges inferring overarching and ordering principles from a range of considered convictions—an early version of what would become reflective equilibrium.

In illustrating how these judges would endorse principles of justice that would confirm our considered convictions, he cites the following example.

> Consider the Inquisition, and recall that this institution justified its activity on the grounds that the teaching of heretics had the consequence of increasing the number of the damned and therefore of substantially interfering with the pre-eminent interests of other men in salvation. The difficulty is that there is no evidence, acceptable to the canons of inductive procedure, to support this belief, and therefore, by (iii), the proceedings of the Inquisition were unjust.[273]

Rawls's point here is that a principle of justice competent moral judges would endorse would confirm our considered conviction that the Inquisition was unjust precisely because it was based on a nonpublic justification grounded in faith, not evidence or

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[271] *TJ* 189.
[272] Philosophical Review, 60 (2): 177-197.
[273] ODPE 194.

reason. While this implies that Rawls at that time believed it unacceptable to coerce others according to reasons grounded in faith rather than evidence, he makes clear that this doesn't entail that merely *holding* such a belief is unjust. Consider a state that made Cliffordian evidentialism the law of the land—one that legally enforced the rule: "no one shall believe a proposition unless evidence, acceptable by the canons of inductive procedure, is known to exist as a ground for believing it."[274] Rawls argues that this would unnecessarily constrain our liberty of conscience "since it is clear that believing propositions for which no evidence yet exists does not necessarily affect the interest of other persons."[275] No third party interests are frustrated when a person merely *holds* a religious belief that lacks rational support, or when a scientist believes an as of yet unproven hypothesis. Doxastic commitment to inadequately supported propositions only becomes problematic when such beliefs are acted upon in ways that impact others.

This aligns with what Rawls at that time considered a shared conviction concerning the acceptability and role of religious faith.

> [I]t is generally recognized that the articles of religious faiths are not usually establishable by evidence acceptable to inductive criteria. Believers themselves are often anxious to grant this point frequently on the grounds that otherwise faith would not be faith. Yet no one, believer or unbeliever, is prepared to maintain that having religious belief is unjust, although some may think it mistaken. The having of such beliefs is an interest we respect, and a person is required to evidence this

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[274] ODPE 194.
[275] ODPE 194.

> belief only when he proposes to take action on the basis of it which substantially interferes with the interests of other persons.[276]

Rawls's point is that for the vast majority of us, a fixed considered conviction is that while persons are at liberty to believe whatever they like, they may only act in ways that risk affecting others when possessing adequate justifying evidence for the reasons contributing to their decision to do so. That is, "each man may believe what he sees fit to believe, but not at the peril of another; and in an action wherein the interests of others are affected, a necessary condition for its being just is that the beliefs on which it is based are evidenced beyond any reasonable doubt."[277] This implies a strong reluctance to allow nonpublic reasons, and especially nonpublic reasons based on faith, into the public political forum where matters pertaining to basic liberties are decided. However, post-*TJ* Rawls of course allows the inclusion of all nonpublic reasons – first in *PL*, only when necessary to save public reason itself, and later in IPRR, at any time, so long as supplementary public justifications follow in due course.

Recall though that Wolterstorff argued in favor of widespread inclusion of nonpublic, *especially* religious, reasons, without similar restriction. This is due in large part to his procedurally democratic conception of liberalism, which holds that the best way to treat citizens with equal respect is to protect their equal rights and grant their votes equal weight, regardless of the reasoning behind their advocacy. He argues that this approach is philosophically superior to those that largely exclude nonpublic

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[276] ODPE 195.
[277] ODPE 195.

considerations for two main reasons. First, asking religious citizens in particular to bracket their core moral convictions when deciding policy questions is incredibly unfair, since nonreligious citizens need not suffer this burden. That is, nonreligious citizens will find it easier to *translate* their nonpublic views into public terms. And second, because the shared reasoning pool from which Rawls asks citizens to draw is shallow at best, and completely empty at worst.

As I responded to a similar charge from Reidy, I for the most part set aside Wolterstorff's second complaint, that public reason is either indeterminate or incomplete. It is of course a relevant criticism, for to the extent that the reason set from which I expect citizens to draw is shallow or empty, PJ becomes impossible to satisfy. I simply reiterate here that others, such as Schwartzman and Williams, at least claim to have vindicated public reason against this criticism, and only add that it at least appears that Supreme Court Justices find the reason pool deep enough. Their official published opinions certainly seem to adequately answer serious political questions without reference to comprehensive doctrines. Whether or not their published opinions accurately represent their actual internal deliberation is another matter, but the reasoning Justices model in their published opinions at least casts some doubt on Wolterstorff's incompleteness/indeterminacy thesis.

However, to Wolterstorff's first complaint, that demanding that religious citizens set aside their nonpublic convictions for political purposes is unfair and burdensome, I respond that while it may indeed be an inconvenience, it doesn't seem too much to ask in light of the fact of reasonable pluralism. Reflection on the potential harm of coercing

others for reasons that they cannot be expected to appreciate should give citizens who recognize the natural duty of mutual respect reason enough to at least *attempt* to develop a freestanding conception of justice and reason from that perspective, using public reasons alone to settle serious political questions. Whether it is psychologically *possible* to bracket one's comprehensive commitments in a way PJ seems to require is an issue I take up next chapter.

In any case, PJ accommodates those who desire to inject nonpublic reasons into the public political forum by allowing what Rawls calls conjecture.[278] Conjecture is used to show those who might be reluctant to support a policy that their comprehensive doctrines do not conflict with it—not to give them reason to support it, but to allay any residual nonpublic worries that might threaten stability. Rawls actually provides an excellent example of permissible conjecture in a footnote in IPRR. There he summarizes the efforts of Abdullahi Ahmed An-Na'im to convince Muslims hostile to liberalism that Shari'a is compatible with constitutional democracy.

> The basic idea of An-Na'im's interpretation, following the late Sudanese author Ustadh Mahmoud Mohamed Taha, is that the traditional understanding of Shari'a has been based on the teachings of the later Medina periods of Muhammad, whereas the teachings of the earlier Mecca period of Muhammad are the eternal and fundamental message of Islam… In particular, the earlier Mecca interpretation of Shari'a supports equality of men and women, and complete

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[278] *PL* 462.

> freedom of choice in matters of faith and religion, both of which are in accordance with the constitutional principle of equality before the law. An Na'im writes: "The Qur'an does not mention constitutionalism, but human rational thinking and experience have shown that constitutionalism is necessary for realizing the just and good society prescribed by the Qur'an."[279]

Appeal to nonpublic reasons in this way is completely acceptable so long as it is done in good faith—that is, so long as arguments submitted are sincerely believed to genuinely mitigate conflicts from a perspective internal to a particular comprehensive doctrine—and so long as the reasons invoked are not intended or taken as reasons in a position's favor, but simply as side considerations that do no justificatory work. Nonpublic reasons can thus be invoked to show a comprehensive doctrine is either compatible with a particular policy, or with liberalism in general. Thus, we might phrase a revised proviso consistent with PJ as follows.

> *PJ permits nonpublic reasons in the public political forum as conjecture—to reassure adherents to a doctrine that a favored political policy does not in fact conflict with a proper understanding of that doctrine, when an advocate sincerely believes this to be the case—or to encourage adherents to a particular comprehensive doctrine to commit to the liberal project itself.*

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[279] *PL* (IPRR) 461.

I would add that in line with the Rawls of *PL*, nonpublic reasons are also permissible in cases of emergency, where they must be invoked to prevent the collapse of a liberal regime itself. But unless that or the above conditions obtain, their inclusion would seem to severely detract from the aims and benefits of PJ, and are therefore excluded. Of course, PJ is an ideal, and PR would allow much looser inclusion of nonpublic considerations.

Legitimacy Revisited

Last, we revisit legitimacy for the purposes of deepening our understanding of exactly how it is attained, its relationship to justice, exactly what justice entails, and how PR and PJ guarantee a requisite degree. I argued above that Public Representation would seem able to satisfy the liberal principle of legitimacy (or LPL). For as the LPL is articulated, it would seem to permit citizens to answer serious political questions however they see fit, so long as they are able to justify their views in public language, for the LPL contains no explicit public judgment component. However, as we saw in chapter one, for a state to be legitimate, it must first be adequately just. Rawls explains this in distinguishing his own conception of legitimacy from Habermas's, and elsewhere

throughout his work,[280] and this minimal justness prerequisite seems natural and consistent with his broader view. However, it is potentially incompatible with the LPL in a way that might make legitimacy contingent upon satisfying something more akin to Public Judgment, rendering Public Representation inadequate.

To see this, first note that the LPL only requires that political decisions be made in accord with certain constitutional essentials that are consistent with principles endorsable by our common human reason. Specifically, it states that:

> [T]he exercise of political power is fully proper only when exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason."[281]

Rawls's focus here is *constitutional* essentials. That is, the LPL only requires that decisions follow the procedures of a constitution that is endorsable with principles acceptable to our common reason, and that positions advocated be substantively consistent with the articles contained within it. And herein lies the problem, for there is more to justice than is contained within a constitution. Consider Rawls's two principles of justice.

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

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[280] *PL* 429.
[281] *PL* 137.

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).[282]

Though lexically ordered, these principles are both central to his conception of justice. And while both are incredibly important to his view, from the beginning Rawls argues that while a constitution should explicitly articulate basic liberties, it should not include explicit requirements concerning the economic conditions that pertain to justice. This is because while deciding whether citizens' basic liberty rights are protected or infringed is a fairly straightforward endeavor, deciding whether an adequate degree of economic reciprocity is achieved is too vague and complex for the judiciary to determine. The Difference Principle, for example, applies to an entire economy, and not to particular intercitizen transactions. Given the complexity of modern economies, with the millions of transactions and all the property and tax laws contained therein, it would be incredibly difficult to declare many economic regimes constitutional or unconstitutional on principled grounds were a constitution to mandate such a specific requirement. Accordingly, Rawls argues that we should task the legislature with enacting laws in accordance with economic matters of justice in good faith to avoid the practical difficulty that would result from embedding them in a constitution.

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[282] *JFR* 42.

This is relevant to legitimacy because while the LPL's focus on constitutional essentials would appear able to guarantee a political order that secured basic liberties, the fact that it neglects considerations of *economic* justice introduces the possibility that it cannot guarantee the requisite degree of *justice simpliciter* needed to enable stability. That is, given its focus on liberties alone, the LPL would seem to only guarantee libertarian economic policies—those advocating strong property rights at the expense of a social minimum—which of course fall short of achieving the economic reciprocity central to liberal justice. However, the question becomes whether such an order would be *so* unjust as to delegitimize its authority. We need to know whether a complete absence of a social minimum is so egregious that it undercuts the state's legitimate authority. On the one hand, it could be the case that Rawls articulates the LPL precisely as he does to indicate that economic justice is inessential to legitimacy. As Rawls's clearest pronouncement on legitimacy, perhaps we should grant the LPL overriding weight and conclude that to whatever requisite degree of justice he elsewhere alluded, it must have not included economic reciprocity.

On the other hand, economic reciprocity is clearly central to his view, enshrined in his second principle of justice. Were it inessential to minimal justice, why would Rawls place it so prominently? Also, note Rawls's third criterion of a minimally reasonable conception of justice is that it contain "measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms."[283] Political orders

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[283] *PL* 141.

that are not minimally reasonable do not qualify as generically liberal, and we can fairly assume that disqualification as generically liberal entails disqualification as minimally just. Further, the implications for a regime lacking basic economic reciprocity would seem contrary not only to the basic commitments of Rawlsian Liberalism, but to the basic commitments of liberalism in general. Recall from chapter one Jeremy Waldron's contention that a central mark of liberalism is its commitment to ensuring persons subject to laws somehow consent to them—indeed, that *legitimacy is contingent* on this condition.[284] When a regime does not guarantee access to basic resources, this prevents some from meaningfully participating in the political process. Without guaranteed access to basic sustenance, some would inevitably become destitute, and consequently unable to fully participate politically.[285] For he who is literally starving does not enjoy the luxury of concerning himself with abortion, gay marriage, inheritance taxes or much anything else. Impoverished citizens would seem forced to vote for whomever promised to relieve their situation, and therefore would be unable to exercise their political rights in any meaningful way. It would therefore seem that a strong case can be made that the LPL is unable to generate the conditions necessary to attain a requisite degree of justice to enable legitimacy.

At least two possible solutions are available. First, we could attempt to reformulate the LPL in a way that explicitly went beyond constitutional essentials. Such a

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[284] Jeremy Waldron. "The Theoretical Foundations of Liberalism," 1987: 128.
[285] Henry Shue makes such an argument in *Basic Rights: Subsidence, Affluence, and U.S. Foreign Policy*. Princeton University Press, 1996.

revised principle would need to include language that specifically addressed economic justice as well as liberty justice. However, a simpler solution would be to argue for the necessity of Public Judgment. While the LPL only explicitly focuses on constitutional essentials, Public Judgment contains a built-in requirement that citizens only advocate positions they sincerely consider most just, which implicitly encompasses economic justice as well as liberty justice. Further, PJ precludes the sort of translation consistent with PR, and mandates that such issues be decided from the perspective of a reasonable conception of justice, drawing only on public reasons. Since no reasonable conception of justice would fail to support a social minimum, and no person could reason from a public perspective and fail to advocate a social minimum, PJ would seem able to rectify this shortfall of PR while leaving the LPL unaltered.

However, one might argue that the above case against PR and in favor of PJ is tempered to the extent we assume ideal conditions. In a realized well-ordered society, where nearly all endorse the same generically liberal conception of justice, and nearly all adhere to a reasonable comprehensive doctrine, there may be little if any risk that PR would generate the grave injustices mentioned above. For one, reasonable comprehensive doctrines by definition never produce judgments viewed as true that conflict with views their political conceptions consider reasonable.[286] Since all are already be committed to reasonable comprehensive doctrines, when reasoning from their nonpublic perspectives, none would arrive at unreasonable positions in the first place, and consequently their

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[286] *PL* (IPRR) 483.

resulting translated positions would necessarily be adequately reasonable and just. Citizens' reasonable comprehensive doctrines would endorse a social minimum, and therefore they would not fail to include it, even when the LPL only explicitly fixates on basic liberties. However, generic PR permits citizens to arrive at their positions from whatever perspective they please. Even when one's comprehensive doctrine is indeed reasonable, if one arrives at a political position without referring to that doctrine, but is perhaps simply *drawn* to it for reasons of self-interest, a view consistent with the LPL could very well fail to achieve economic reciprocity.

But this is prevented when we condition PR with a Reidy-inspired addendum that positions only be advocated when sincerely considered adequately just. Since justice is a function of economic reciprocity as well as basic liberty, such an addendum would entail examining positions according to full justice, not simply liberty justice, and preclude advocacy of libertarianesque policies. With this minor adjustment, PR gains the main benefit of PJ relevant to minimum justice as it pertains to legitimacy—a requirement to take into account economic considerations. And accordingly, this makes revisions to the LPL and adherence to PJ unnecessary for the purposes of legitimacy, redeeming PR as an adequate minimalist baseline.

I think I have made a compelling case that Public Representation and Public Judgment are consistent with and actually improve Rawlsian Liberalism. Given the two main goals of public reason—to facilitate reciprocity in reasons and to produce just outcomes—and in light of their relative abilities to promote the values of justice, respect,

legitimacy and stability, they work well as a moral minimum and a laudable ideal, respectively. Despite their differences, they both enjoy ample textual support, and when explicitly articulated and presented as they are here, PR and PJ help to make sense of Rawls's view on public reason, and resolve a deleterious ambiguity. However, certain objections could be mounted against my position. Thus, in the next and final chapter I attempt to present what I consider the three strongest potential objections in their most powerful form, and to answer them with philosophically satisfying replies.

CHAPTER V:
OBJECTIONS AND REPLIES

Abstract

In this final chapter three objections to my view are presented and resolved: the utopian objection, the perfectionist objection, and the psychological impossibility objection.

Overview

With my account of public reason now fully on the table, I turn to three potential objections to it and my replies. Versions of these objections have been presented and addressed briefly elsewhere in this project, but here I grant each a more thorough treatment. I begin with the utopian objection—that my project assumes conditions that are either too unrealistic to be useful, or conditions that would fully mitigate the concerns PR and PJ purport to address. The concern is that the political order I assume is *so* farfetched that it ceases to be relevant, and were it to actually by some miracle come to fruition, PR and PJ would be embraced and realized without prompt, making my argument for them unnecessary. I reply that I assume only a *realistic* utopia, which is standard practice in political philosophy, and that given the widespread disagreement over the appropriate norms of public reason even for those who assume such conditions, it is almost certain that citizens would still require a positive argument in favor of my standards.

Then I consider the objection that my view implies endorsement of a form of democratic humanist perfectionism—that I desire and perhaps require that citizens answer all questions, including apolitical questions, in the cerebral way I argue they should answer political questions. This is simply not the case. I present PR as a moral minimum only for political purposes. While I suggest that PJ may be well-suited to generate quality conclusions under a range of circumstances, liberty of conscience requires that citizens are free and encouraged to settle apolitical questions however they

please. And in any case, I remain agnostic on the question of whether practicing PJ is the best way to answer all questions.

Last, I consider the objection that PJ in particular asks citizens to do things that they simply cannot, rendering it simply unattainable. The criticism is that PJ requires citizens to engage in a segregation of their public and nonpublic selves that is psychologically impossible. This is especially the case for religious citizens, for whom their identity is thoroughly entangled with their comprehensive views. I reply that while some may indeed find PJ initially awkward, the example of Supreme Court Justices gives us reason to think that setting aside our personal convictions for the purposes of satisfying our roles as citizens is not impossible. Some may be reluctant to comply, but reasonable citizens should recognize the force of the arguments in favor of PJ and consequently bear its burdens nonetheless. And in any case, PJ is not presented as a moral requirement, but as a laudable ideal, and thus is not obligatory. Some will also claim that even PR is too burdensome. But these worries seem overstated, as PR is much more clearly psychologically attainable.

The Utopian Objection

Some might worry that my project assumes a framework of a preexisting well ordered liberal society. This leads to two problems—first, that assuming as much is pejoratively utopian, and second, that were a state thoroughly well ordered already, the

standards of PR and PJ would not need to be articulated—citizens would naturally follow them already. This objection asserts that it is unreasonable to assume a world in which everyone has fully bought into the liberal project, and if we were to assume such a world nonetheless, the problems PR and PJ claim to address would automatically dissolve.

First, with Rawls, I indeed imagine a *realistic* utopia when theorizing about public reason. This means for the purposes of doing political philosophy I have in mind a society living under very favorable conditions. For example, the vast majority of citizens are reasonable, crime occurs but does not exhaust the state's ability to keep it in check, and resources are finite but plentiful enough to secure everyone's needs. This is a legitimate move in political philosophy. We theorize under near ideal conditions to identify the demands of justice for citizens unstrained by the inevitable hardships real polities routinely face. We do this because once clear on the demands of justice under those conditions, we are in a better position to make alterations based on diversions from that model. Were we to work in reverse, and theorize within a model assuming a worst case scenario, or even a model fairly representing actual political conditions, so many variables would be in flux we would be unable to arrive at clear conclusions. Since doing political philosophy is difficult, we simplify our task by fixing many key pieces and honing in on one component at a time, such as public reason, much as economists do with their simplified models. Additionally, assuming reasonably favorable conditions gives polities an ideal toward which we can work, and it potentially provides a vision to inspire concrete political change.

Second, though I have argued that PR and PJ fit well within a Rawlsian framework, and make his body of work more attractive, were these standards obviously required, contemporary liberals wouldn't disagree as they do. I of course think that PJ is beneficial and PR is required, but other incredibly intelligent theorists who have thought just and long and hard (indeed, longer and harder) about public reason disagree. Thus, if theorists disagree over the merits of my approach, it is unlikely that the realization of a roughly well ordered society would automatically instill PR and PJ in the minds of the population. This isn't to say that my view is so radically original that it would have otherwise never come about. Given that its components are apparent in Rawls's primary works, and even scattered throughout the secondary literature, this is hardly the case. But conceding this point isn't the same as saying citizens in a well ordered society would automatically adopt my standards. I assume that they would not, and therefore an argument for them is appropriate.

The Perfectionist Objection

A critic might worry that my standards require commitment to a form of democratic humanist perfectionism. That is, I present a model of man that is highly cerebral and calculating. While he may make inconsequential and routine decisions quite casually, I argue that he should reason through serious political decisions with attention and care. From this one might infer that I expect citizens to use a similar process to

decide all their life questions, including how they choose a conception of the good, and how they decide nonpolitical ethical matters.

However, though I argue that the consciously reflective disposition is necessary for the purposes of public reason, I set aside how persons ought to make decisions in their personal lives. Non-policy questions are matters for comprehensive doctrines to settle. Though applying PR and PJ to all of one's decisions is permissible, the epistemic obligations of public reason only apply to citizens *as* citizens. Indeed, the obligations of public reason do not even apply to the decision to commit to liberalism or even to become an active citizen. They only apply once one is on board with the liberal project and engaged at some stage of the lawmaking process.

The Psychological Impossibility Objection

Next, one might argue that my standards are psychologically impossible to satisfy—that humans simply cannot compartmentalize their thought process in the way I suggest. PJ in particular asks citizens to temporarily table the perspective from which they decide what is true and what is good, and to adopt a viewpoint stripped of their most cherished convictions. Wolterstorff and others have argued that religious citizens are especially unable to think through policy questions from a public perspective. Their faiths are so integral to their identites, the objection goes, that not only is PJ too much to ask, but so too is even PR.

However, we have good reason to believe PJ is in fact psychologically possible. First, many officials at least *appear* to engage in just what I suggest quite regularly. As I have already noted several times, Supreme Court Justices presumably genuinely endorse their published opinions, which is to say that they thought through the decision in their heads as described on paper. While I conceded in an earlier chapter that their opinions do not establish the certainty that this occurs, I reiterated that Rawls at least thinks they have the capacity, for he uses the example of judges to illustrate how citizens should similarly engage in something akin to PJ. Justices' opinions are perhaps the exemplar of public reason—carefully crafted arguments in almost exclusively public terms. Perhaps regular citizens have little experience reasoning this way. But citizenship is an office like any other, and if judges are capable of routinely cordoning off certain sets of reasons and relying only on those appropriate for their task at hand, so too could normal citizens with practice.

Though we cannot be sure which reasons they actually consider (though cynics tell us to be suspicious), most legislators also exhibit similar intellectual discipline when deliberating in the open. Thus, it is not implausible to think that citizens could develop similar skills to handle political questions. Some will of course find it cumbersome to abide and will be tempted to allow their comprehensive doctrines to play a larger role. *I myself am often tempted in this way*. But such burdens are not unique to the requirements of public reason. The skills necessary could be cultivated with practice, perhaps in advanced civics classes in elementary schools, and with the help of trained moderators in

town hall meetings. Further, the disposition to adhere would likely become more widespread and prominent as a people's officials embraced and publicly practiced PJ.

What can we say of citizens who refuse to even *attempt* to practice PJ? Rawls himself says in ODPE that one mark of those worthy of the title "reasonable man" is that such an individual is able and willing to set aside his biases when called to do so.

> [A] reasonable man knows, or tries to know, his own emotional, intellectual, and moral predilections and makes a conscientious effort to take them into account in weighing the merits of any question. He is not unaware of the influences of prejudice and bias even in his most sincere efforts to annul them; nor is he fatalistic about their effect so that he succumbs to them as being those factors which he thinks must sooner or later determine his decision.[287]

However, as I have explained, Public Judgment is in any case a laudable ideal, and not a moral requirement. Therefore those who sincerely claim they simply cannot satisfy its requirements are free to instead abide by PR. This was part of the original reason for retaining PR as a moral minimum—to accommodate those who claim PJ is either too burdensome or psychologically impossible. And given the lax standards of PR, it is difficult to imagine a person sincerely arguing they are incapable of satisfying it as well.

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[287] ODPE 179.

CONCLUSION

This project was inspired by a professional interest in the work of John Rawls, and a personal interest in the appropriate role of religion in politics. At the time I decided to pursue it, I realize now how dim my understanding of Rawls was, as well as my appreciation of the issues essential to public reason. In fact, initially siding with Audi, I argued that motivation was necessary for legitimacy, and even advocated a Principle of Public Motivation at my prospectus defense.

But after many email exchanges with David Reidy, extensive study and reflection, I decided that the motivational impetus compelling citizens to advocate their positions was indeed largely irrelevant, and in any case seemingly inessential to the four key values political philosophers take so seriously—justice, respect, legitimacy and stability. *Judgment* was what I had in mind all along, not motivation, though for a time I did not adequately appreciate the difference.

In chapter four I mentioned in passing that even if Rawls didn't intend two separate standards on public reason, given that presenting his view in this way seems to strengthen it, he shouldn't mind. But in light of Rawls's brilliance, I concede a degree of hesitance that I might ultimately disrupt the balance of his view by contradicting his intent. I think the exegetical tension highlighted at the end of chapter two is compelling, but perhaps it is due to a misreading, or a failure to put select quotes in proper context. Nevertheless, I stand by the arguments of chapter four, and think that Public Representation does indeed appear to be morally required, and Public Judgment does

indeed appear to generate the gains I suggest. I can only express my humility in light of the author with which I am working.

Whether it is faithful to his intent, I think this project achieves modest gains toward better understanding Rawls, as well as how citizens should go about thinking through serious political issues. In those respects, it satisfies my original aims, and is successful. But its real success will ultimately turn on whether these arguments make their way into the real world, and whether actual citizens find them compelling enough to act accordingly. On that note, I invite the reader to join me in embracing Public Judgment—not because we must—but because we have good reason.

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